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Title 19

CORPORATIONS AND BUSINESS

Part I. Office of Women's Business Enterprise

Chapter 1. General Provisions

§101. Statement of Policy

A. The Louisiana Small Business Procurement Act requires that, for each fiscal year, an amount not to exceed 10 percent of the value of anticipated total state procurement of goods and services be set aside for awarding to small businesses. In addition to this amount, 10 percent of that 10 percent will be set aside for awarding to Louisiana small, women-owned businesses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1731-1738.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Women's Business Enterprise, LR 10:790 (October 1984).

§103. Definitions

A. For the purpose of these rules and regulations the following words have the meanings indicated:

Control Exercising the power to make policy decisions.

Operate Being actively involved in the day-to-day management of the company.

Small Business A business as defined by the Small Business Administration of the United States government which for the purposes of size eligibility or other factors meets the applicable criteria set forth in 13 Code of Federal Regulations, Part 121, as amended, and which has its principle place of business in Louisiana.

Women Owned Business A business that is at least 51 percent owned by a woman or women who also control and operate it.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1731-1738.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Women's Business Enterprise, LR 10:790 (October 1984).

Chapter 3. Certification

§301. Delegation

A. The commissioner of administration has delegated to the Louisiana Office of Women's Business Enterprise the authority to certify that a business is woman-owned in accordance with R.S. 39:1738.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1731-1738.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Women's Business Enterprise, LR 10:790 (October, 1984).

§303. Procedure

A. Companies must complete all portions of the certification materials and return them as specified in the following Subsections in order to be considered for certification under the women's set-aside program.

B. The following documents plus any specified attachments constitute the certification materials required from women-owned companies interested in providing goods, services or supplies under R.S. 39:1551-1755.

1. Certification Résumé (Form Number DA 3302: Revised 4/85) which must be completed and returned to the Department of Economic Development, Division of Minority and Women's Business Enterprise, Box 94185, Baton Rouge, LA 70804-9185. The following attachments must accompany the Certification Résumé when it is submitted:

a. legal ownership documents (articles of incorporation, partnership agreements, stock ownership/distribution agreements), financial statements of the company which indicate the ownership of major assets as well as the principal stockholders in the corporation (stock certificates), company balance sheets, federal income (business) tax statements for the past three years (or as applicable), state and city licenses (whichever applicable), a copy of the bank signature card for the business, résumé of corporate shareholders and employees, organizational chart, equipment/building ownership and/or rental documents, supplier contract and relationship between distributor and prime contractor (if applicable), and any additional legal documents that would reflect ownership and control;

b. all information requested on the Certification Résumé must be supplied, and the document itself must be notarized, as indicated, prior to submittal;

c. requests for a waiver of certain requested information in §303.B.1.a, not applicable to certain business structures, must be accompanied by a justification statement.

C. Misrepresentation of any of the information submitted is in violation of Act 713.

D. For women vendors interested in providing professional, personal or consulting services under R.S. 39:1481-1526, or who are interested in construction contract work in connection with public works projects under R.S. 38:2184-2317, the following documents, plus specified attachments, shall constitute the required certification materials:

1. Certification Résumé (Form Number DA 3302 Revised 4/85) plus attachments as specified in ' 303.B.1.a;

2. a listing, on company letterhead, of the subject areas of expertise of the vendor company; résumés of key personnel; and a list describing previous work done in each subject area with sufficient identification of the client with a contact person (name, title, business address, telephone number) for each client listed, so that references might be obtained;

3. all of the above materials must be submitted directly to the Division of Minority and Women's Business Enterprise for certification of these vendors.

E. Newly established businesses (operating less than one year) and potential businesses seeking interim certification for the purpose of obtaining a loan through the Louisiana Economic Development Corporation should submit a business plan with a cover letter requesting a waiver for documents that do not apply in §303.B and C.

F. The Louisiana Department of Transportation and Development will continue to certify, in accordance with its own procedures, women-owned business contractors who wish to perform work under Chapter 1 of Title 48. The Division of Minority and Women's Business Enterprise will accept such certifications as equivalent to its own.

G. Additional documents/information may be requested of applicants upon review of their applications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1731-1738.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Women's Business Enterprise, LR 10:790 (October 1984), amended by the Department of Economic Development, Division of Minority and Women's Business Enterprise, LR 15:961 (November 1989).

§305. Disapproval of Women-Owned Businesses

A. The director of the Louisiana Office of Women's Business Enterprise shall either approve or disapprove businesses for certification. If a business is disapproved for certification as a woman-owned business, a letter will be sent to the named owner(s) of the business stating the

reason(s) for disapproval. A copy of the disapproval form will remain on file at the Louisiana Office of Women's Business Enterprise, and a second copy will be forwarded to the State Purchasing Office and retained there for their records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1731-1738.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Women's Business Enterprise, LR 10:790 (October 1984).

Chapter 5. Appeal Procedures

§501. Appeal Procedures

A. If a business owner is aggrieved by a disapproval, she has 15 days after receiving the disapproval letter to provide additional information, explanation, or clarification to the Louisiana Office of Women's Business Enterprise, Box 94095, Baton Rouge, LA 70804-9095. The business owner may provide this information either through a letter to this office or may request a hearing with the director of the Louisiana Office of Women's Business Enterprise. This information will be reviewed in conjunction with the original form submitted and a final determination will be made. The business owner will be notified in writing within 15 days of this final determination. Any business owner who is still aggrieved after the final determination of the director of the Louisiana Office of Women's Business Enterprise may request that the commissioner of administration review the record and the written determination. The request for this review shall be submitted in writing 15 days of receipt of the director's final determination and shall contain detailed reasons for the objection to the final ruling.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1731-1738.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Women's Business Enterprise, LR 10:791 (October 1984).

Title 19

CORPORATIONS AND BUSINESS

Part II. Small and Emerging Business Development Program

Chapter 1. General Provisions

(Editor's Note: Where the phrase "economically disadvantaged" appears in the rules under Title 19, for Corporations and Businesses, Part II, Chapters 1 through 13, should be now known as "small and emerging," except "Economically Disadvantaged Persons" will be "Small and Emerging Business Persons.")

§101. Statement of Policy

A. In accordance with the Louisiana Economically Disadvantaged Business Act of 1996 (R.S. 51:1751-1765 and the provisions of the Administrative Procedure Act, R.S. 49:950-970 as amended) the Department of Economic Development, Division of Economically Disadvantaged Business Development, these regulations are both substantive and technical in nature. They are intended to specify the procedure for certification and as qualification for an economically disadvantaged business; to provide for bonding and other financial assistance; to provide for technical and managerial assistance; to provide for a business mentor-protege program; to recognize achievements for economically disadvantaged businesses; and to facilitate access to state agency procurement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1759.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:49 (January 1997).

§103. Purpose

A. The purpose and intent of this Chapter is to provide the maximum opportunity for economically disadvantaged businesses to become competitive in a nonpreferential modern economy. This purpose shall be accomplished by providing a program of assistance and promotion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1759.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:50 (January 1997).

§105. Definitions

A. When used in these regulations, the following terms shall have meanings as set forth below.

Certification Cverification that a business qualifies for designation as an economically disadvantaged business.

Division Cthe division of economically disadvantaged business development in the Department of Economic Development.

Economically Disadvantaged Business (EDB) C a small business organized for profit and performing a commercially useful function which is at least 60 percent owned and controlled by one or more economically disadvantaged persons and which has its principal place of business in Louisiana. A nonprofit organization is not an economically disadvantaged business for purposes of this Chapter.

Economically Disadvantaged Person C a citizen of the United States who has resided in Louisiana for at least one year and whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business, and whose diminished opportunities have precluded, or are likely to preclude, such individual from successfully competing in the open market.

Executive Director C the Director of the Division of Economically Disadvantaged Business.

Firm C a business that has been certified as economically disadvantaged.

Full-time C working in the firm at least 35 hours per week.

RFPC C Request for Proposal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1759.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:50 (January 1997), amended LR 24:430 (March 1998).

§107. Eligibility Requirements for Certification

A. An EDB is a firm that is owned and controlled by one or more economically disadvantaged individuals and meets the requirements of economic disadvantaged businesses. Eligibility requirements falls into two categories that apply to the individual owners and to the applicant's firm. In order to continue participation in the program, a firm and it's individual owners must continue to meet all eligibility requirements.

B. Economically Disadvantaged Persons. For purposes of the program, a person who meets all of the criteria in this Section shall be defined as an economically disadvantaged individual.

1. Citizenship. The person is a citizen of the United States.

2. Louisiana Residency. The person has resided in Louisiana for at least one year.

3. Net Worth. Each individual owner's net worth may not exceed \$200,000. The market value of individual

owner's personal residence will be excluded from the net worth calculation.

4. **Income.** Each individual owner must submit personal federal income tax returns for the past three years.

C. Economically Disadvantaged Business

1. **Ownership and Control.** At least 60 percent of the company must be owned and controlled by one or more economically disadvantaged individuals.

2. **Business Size.** For purpose of Louisiana's EDB program, an eligible firm's size shall be defined as 50 percent or less of the published U.S. Small Business Administration's size standards by SIC codes.

3. **Principal Place of Business.** The firm's principal place of business must be Louisiana.

4. **Lawful Function.** The company has been organized for profit to perform a lawful, commercially useful function.

5. **Business Annual Gross Revenue.** A business's annual gross revenue may not exceed the Louisiana EDB's size standards by SIC Code. Where the EDB program size standards utilize "number of employees" instead of a monetary figure, the Louisiana EDB program shall use \$10.5 million in gross revenue as the qualifying monetary standard.

6. **Business Net Worth.** The business' net worth at the time of application may not exceed \$750,000.

7. Diminished Capital and Credit

a. A firm will be considered to have diminished capital and credit if its ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to other firms in the same or similar line of business, and whose diminished opportunities have precluded, or are likely to preclude, such firm from successfully competing in the open market. Examples of diminished capital and credit are lack of access to long-term financing or credit, working capital financing, equipment trade credit, raw materials, supplier trade credit, and bonding. The applicant must furnish documentation that credit was denied. An applicant firm that scores poorly on all financial measurements published by the Robert Morris Associates for liquidity, leverage, operating efficiency, and profitability is considered to be economically disadvantaged. Factors to be considered are:

- i. business assets;
- ii. net worth;
- iii. income;
- iv. profit.

b. The latest revision of the *Annual Statement Studies*, published by Robert Morris Associates (the RMA) will be used. Factors to be compared are:

- i. current ratio;
- ii. quick ratio;

- iii. inventory turnover;
- iv. account receivable turnover;
- v. sales to working capital;
- vi. debt-to-net worth ratio;
- vii. return on assets;
- viii. percentage return on investment;
- ix. percentage return on sales.

8. **Full Time.** Managing owners who claim economically disadvantaged status must be full-time employees of the applicant firm.

9. **Job Creation.** An applicant firm must have a minimum of at least two full-time employees. A waiver may be granted for this requirement dependant upon the firm's plans for expansion.

D. **Documents Required for Certification.** The application shall be supported by, but not limited to, the following documents:

1. business's balance sheet and income statement;
2. verification of signatories on business bank accounts;
3. copies of income tax returns;
4. resumes of owners and top managers;
5. copies of business licenses and permits;
6. copies of stock certificates, stock transfer ledgers, and articles of incorporation if business is a corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1751, 1752, and 1754.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:50 (January 1997), amended LR 24:430 (March 1998), LR 25:1084 (June 1999), LR 26:1572 (August 2000).

§109. Control and Management

A. **Description.** An applicant firm's management and daily business operations must be controlled by an owner(s) of the applicant firm who has/have been determined to be economically disadvantaged. In order for a disadvantaged individual to be found to control the firm, that individual must have managerial or technical experience and competency directly related to the primary industry in which the applicant firm is seeking program certification.

1. The economically disadvantaged individual(s) upon whom eligibility is based shall control the board of directors of the firm, either in actual numbers of voting directors or through weighted voting. In the case of a two-person board of directors where one individual on the board is disadvantaged and one is not, the disadvantaged vote must be weighted by share ownership, worth more than one vote to achieve a minimum of 60 percent control, in order for the firm to be eligible for the program. This does not preclude the appointment of nonvoting or honorary directors. All

arrangements regarding the structure and voting rights of the board must comply with state law and with the firm's articles of incorporation and/or bylaws.

2. Individuals who are not economically disadvantaged may be involved in the management of an applicant's firm and may be stockholders, partners, officers, and/or directors of such firm. Such individual(s), their spouse(s) or immediate family members who reside in the individual's household may not, however:

a. exercise actual control or have the power to control the applicant or certified firm;

b. be an officer or director, stockholder, or partner of another firm in the same or similar line of business as the applicant or certified firm;

c. receive excessive compensation as directors, officers, or employees from either the applicant or certified firm. Individual compensation from the firm in any form, including dividends, consulting fees, or bonuses, which is paid to a non-disadvantaged owner, his/her spouse or immediate family member residing in the same household will be deemed excessive if it exceeds the compensation received by the disadvantaged chief executive officer, president, partner, or owner, unless the compensation is for a clearly identifiable skill for which market rates must be paid for the firm to utilize the person's expertise;

d. be former employers of the economically disadvantaged owner(s) of the applicant or certified firm, unless the division determines that the contemplated relationship between the former employer and the disadvantaged individual or applicant firm does not give the former actual control or the potential to control the applicant or certified firm and if such relationship is in the best interests of the certified firm.

B. Non-disadvantaged Control. Non-disadvantaged individuals or entities may not control, or have the power to control, the applicant firm. Examples of activities or arrangements which may disqualify an applicant firm from certification are:

1. a non-disadvantaged individual, such as an officer or member of the board of directors of the firm, or through stock ownership, has the power to control daily direction of the business affairs of the firm;

2. the non-disadvantaged individual or entity provides critical financial or bonding support or licenses to the firm, which directly or indirectly allows the non-disadvantaged individual to gain control or direction of the firm;

3. a non-disadvantaged individual or entity controls the firm or the individual disadvantaged owners through loan arrangements;

4. other contractual relationships exist with nondisadvantaged individuals or entities, the terms of which would create control over the disadvantaged firm.

AUTHORITY NOTE: Promulgated in accordance with R.S.51:1759.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:51 (January 1997).

§111. Responsibility for Applying

A. It is the responsibility of any business wishing to participate in the program to complete the required certification process and to provide all the information requested. Failure to provide complete, true, or accurate data may result in rejection of the application to participate in the program.

B. Certification materials will be distributed by the Division upon written or verbal request. Written requests for certification materials should be directed to the Division of Economically Disadvantaged Business Development, Baton Rouge, LA 70804.

C. Certification as an EDB does not constitute compliance with any other laws or regulations and does not relieve any firm of its obligations under other laws or regulations. Certification as a disadvantaged business also does not constitute any determination by the Division or that the firm is responsible or capable of performing any work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1755.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:52 (January 1997).

§113. Certification Application Procedure

A. Applicant submits a completed certification application and supporting documents to the Division.

B. The Division reviews the certification application. If it is incomplete or further information is needed, the Division will contact applicant. If the applicant does not respond within 15 days, the application will be denied.

C. The Division shall conduct a site visit at the firm's place of business, prior to certification.

D. Information obtained from the site visit is added to the file, and a written recommendation is made to the Division's executive director.

E. The executive director notifies the applicant in writing of the decision whether or not to grant certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753, 1755.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:52 (January 1997).

§115. Duration of Certification

A. The maximum amount of time that a firm may be granted certification by the Division is seven years.

B. Retention of the firm in the program depends upon time, the firm's progress toward attainment of its business

goals, willingness or ability to cooperate and follow through on recommendations of the Division.

C. When the applicant firm's score on financial measurements per their SIC code published by the Robert Morris Associates for liquidity, leverage, operating efficiency, and profitability equals to or better than the national average, the firm will be graduated from the program if the firm's participation in the program has been less than seven years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1755.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:52 (January 1997), LR 26:1572 (August 2000).

§117. Reports by Certified Economically Disadvantaged Businesses

A. Report Form. On forms identified or prescribed by the Division, certified businesses shall report at times specified by the Division their financial position and attainment of the business' performance goals.

B. Verification of Eligibility. The Division may take any reasonable means at any time to confirm a certified firm's eligibility, such as by letter, telephone contact, contact with other governmental agencies, persons, companies, suppliers, or by either announced or unannounced site inspection.

C. Notification of Changes. To continue participation, a certified firm shall provide the Division with a written statement of any changes in an address, telephone number, ownership, control, financial status, or major changes in the nature of the operation. Failure to do so may be grounds for termination of eligibility.

D. Evaluation. The Division, at such times it deems necessary, shall evaluate the information to determine progress, areas for further improvement, resources needed by the firm, and eligibility for continued participation in the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1757.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:52 (January 1997), LR 26:1572 (August 2000).

§119. Deception Relating to Certification of Economically Disadvantaged Business

A. Any person found guilty of the crime of deception relating to certification of an EDB as provided in R.S. 51:1764 will be discharged from the program and will not be eligible to reapply under the business name involved in the deception or any business with which such individual(s) may be associated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1764.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of

Economically Disadvantaged Business Development, LR 23:52 (January 1997).

Chapter 3. Developmental Assistance Program

§301. Developmental Assistance

A. Purpose. The Division will coordinate technical, managerial, and financial assistance through internal and external resources to assist certified economically disadvantaged businesses to become competitive in their markets.

B. Developmental Steps

1. The Division will conduct a preliminary analysis of the firm's situation to determine its strengths and weaknesses.

2. Determination of Assistance. In consultation with the business owner, the Division's staff will determine areas in which the business owner needs assistance.

3. Referral to Additional Resources. The division will assist the firm in obtaining intensive technical and/or managerial assistance from other resources, such as Small Business Development Centers, Procurement Centers, consultants, business networks, professional business associations, educational institutions, and other public agencies.

4. Ongoing Evaluation. In conjunction with the economically disadvantaged firm and appropriate external resources, the Division will periodically assess the EDB's progress toward attainment of its business goals. The Division, in conjunction with the EDB firm, will determine the effectiveness of assistance being administered. If assistance is ineffective, the Division will investigate and take appropriate action.

5. Graduation from the Program. After a pre-agreed performance or time has been reached, or combination of the two, the EDB will graduate from the program. Companies that do not make satisfactory progress will be terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:53 (January 1997), LR 26:1573 (August 2000).

Chapter 5. Mentor-Protégé Program

§501. General Policy

A. The policy of the state is to implement a Mentor/Protégé program that breaks down barriers and builds capacity of small and emerging businesses, through internal and external practices which include:

1. Tone Setting. Intense and deliberate reinforcement by the governor's office of the state's provision for substantial inclusion of small and emerging businesses in all aspects of purchasing, procurement and contracting;

2. Accountability. Responsibility of each cabinet member and policy administrator to produce self-imposed and specific outcomes within a specified period of time;

3. Partnering. Teaming of Small and Emerging Businesses with businesses who have the capability of providing managerial and technical skills, transfer of competence, competitive position and shared opportunity toward the creation of a mutually beneficial relationship with advantages which accrue to all parties;

4. Capacity Building. Enhancing the capability of small and emerging businesses to compete for public and private sector contracting and purchasing opportunities;

5. Flexibility. Promoting relationships based on need, relative strengths, capability and agreement of the parties within the boundaries of the program objectives of inclusion, impartiality and mutual understanding;

6. Education. Sharing instruction on intent, purpose, scope and procedures of the Mentor/Protégé program with both government personnel at all levels of administration as well as the business community and the general citizenry;

7. Monitoring. Requiring the routine measurement and reporting of important indicators of (or related to) outcome oriented results which stems from the continuing quest for accountability of Louisiana state government;

8. Reporting. Informing the governor's office of self-imposed outcomes via written and quarterly reports as to the progress of intra-departmental efforts by having the secretary of the department and her/his subordinates assist in the accomplishment of the initiative keep records, and coordinate and link with representatives of the Department of Economic Development; and

9. Continuous Improvement. Approach to improving the performance of the Mentor/Protégé operation which promotes frequent, regular and possible small incremental improvement steps on an ongoing basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 23:50 (January 1997), amended LR 26:1573 (August 2000).

§503. Incentives for Mentor Participation

A. Businesses participating as mentors in the Mentor/Protégé Program will be motivated for program participation via program features incorporated in the bid process as well as contracts and or purchase agreements negotiated with the firm. The following features may be instituted by the state of Louisiana to motivate Mentor participation.

1. Preferential Contract Award. The state of Louisiana may institute a system for awarding points to mentor participants which will confer advantages in the bid or selection process for contracting. The evaluation points granted a Mentor/Protégé Program participant will be

proportionate to the amount of protégé participation in the project. Evaluation points will be weighted with the same standards as points awarded for quality for product or service; or

2. Performance Incentives. Contracts for goods or services may include a factor for evaluation of performance for the purpose of providing incentives for work performed or deliveries completed ahead of schedule. The incentive for contractors and suppliers who are Mentor/Protégé Program participants shall be not less than 5 percent greater than incentives awarded to firms who are not program participants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1573 (August 2000).

§505. Incentives for Protégé Participation

A. Businesses participating as proteges will be eligible for the following program benefits:

1. Subcontracting Opportunities. Protégé firms may be eligible for non-competitive subcontracting opportunities with the state and private sector industries.

2. Technical and Developmental Assistance. Protégé firms will be provided technical and developmental assistance provided by Mentors which is expected to build the capacity of the protégé firm to compete successfully for public and private sector opportunities.

3. Networking. The Department of Economic Development will institute a system of networking protégé firms with potential mentors for the purposes of facilitating successful Mentor/Protégé partnerships. SEB firms participating in the program will be included in the Department of Economic Development's protégé source guide, which lists the firm and its capabilities as a sources of information for mentors in the program. Additionally, networking seminars for the purposes of introducing potential mentors and protégés will be held annually.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1574 (August 2000).

§507. Guidelines for Participation

A. The Mentor/Protégé Program will be open to participation by any business entity which meets the criteria for participation as outlined below.

1. Mentor Firms:

a. must be capable of contracting with the state;

b. must demonstrate their capability to provide managerial or technical skills transfer or capacity building; and

c. must remain in the program for the period of the developmental assistance as defined in the Mentor/Protégé plan.

2. Protégé Firms:

a. must be a certified Small and Emerging Business with the state of Louisiana Department of Economic Development;

b. must be eligible for receipt of government and private contracts;

c. must graduate from the program within a period not to exceed 7 years or until the firm reaches the threshold of \$750,000 net worth as defined by the SEB certification guidelines.

3. Mentor/Protégé Plan:

a. A Mentor/Protégé Plan signed by the respective firms shall be submitted to the Department of Economic Development, Division of Small and Emerging Business Development for approval. The plan shall contain a description of the developmental assistance that is mutually agreed upon and in the best developmental interest of the protégé firm.

b. The Mentor/Protégé plan shall also include information on the mentor's ability to provide developmental assistance, schedule for providing such assistance, and criteria for evaluating the protégé's developmental success. The plan shall include termination provisions complying with notice and due process rights of both parties and a statement agreeing to submit periodic report reviews and cooperate in any studies or surveys as may be required by the department in order to determine the extent of compliance with the terms of the agreement.

c. The submitted Mentor/Protégé Agreement shall be reviewed by an Economic Development Small Business Advisor. The Small Business Advisor may recommend to the executive director of the Division of Small and Emerging Business Development acceptance of the submitted Agreement if the agreement is in compliance with the division's Mentor/ Protégé guidelines.

4. Protégé SelectionCSelection of the protégé is the responsibility and at the discretion of the mentor. Protégés may be selected from the listing of SEB's provided by the Department of Economic Development, Division of Small and Emerging businesses. A protégé selected from another source or reference must be referred to the Department of Economic Development for certification as an SEB. The protégé must meet the department's guidelines for SEB certification as a condition of the Mentor/Protégé Plan acceptance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1574 (August 2000).

§509. Measurement of Program Success

A. The overall success of the Mentor/Protégé program will be measured by the extent to which it results in:

1. an increase in the protégé firm's technical and business capability, industrial competitiveness, client base expansion and improved financial stability;

2. an increase in the number and value of contracts, subcontracts and supplier agreements by small and emerging businesses; and

3. the overall enhancement and development of protégé firms as a competitive contractor, subcontractor, or supplier to local, state, federal agencies or commercial markets.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51: 1753.1

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1574 (August 2000).

§511. Internal Controls

A. The Division of Small and Emerging Business Development will manage the program and establish internal controls to achieve the stated program objectives. Controls will include:

1. reviewing and evaluating Mentor/Protégé agreements for goals and objective;

2. reviewing semi-annual progress reports submitted by mentors and protégés on protégé development to measure protégé progress against the approved agreement;

3. requesting and reviewing periodic reports and any studies or surveys as may be required by the division to determine program effectiveness and impact on the growth, stability and competitive position of Small and Emerging Businesses in the state of Louisiana; and

4. continuous improvement of the program via ongoing and systematic research and development of program features, guidelines and operations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51: 1753.1

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1574 (August 2000).

§513. Non-performance

A. The Mentor/Protégé Agreement is considered a binding agreement between the parties and the state. Mentors who compete for contract award or purchasing activity and receive evaluation points as program participants are bound, in accordance with the terms of the state contract or purchase order, to fulfill the responsibilities outlined in the approved Mentor/Protégé Agreement as a condition of successful contracting or purchase activity. Protégé who are selected for program participation are bound, in accordance with the terms of their agreement with the Department of Economic Development for continued participation in the program. Failure of the parties to meet

the terms of the agreement are considered a violation of contract with liabilities as outlined below.

B. Failure of the mentor to meet the terms of the Mentor/Protégé Agreement will be considered a default of state contract or purchasing agreement and.

C. Failure of the protégé to meet the terms of the Mentor/Protégé Agreement will result in exclusion from future participation in the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1574 (August 2000).

§515. Conflict Resolution

The state will institute a system for independent arbitration for the resolution of conflicts between mentors and protégé as program participants and/or between program participants and the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1575 (August 2000).

Chapter 7. Recognition Program

§701. Recognition

A. Purpose. The Division will publicly recognize outstanding accomplishments or contributions from economically disadvantaged businesses, public agencies, and noneconomically disadvantaged firms. Companies and agencies that would be recognized include:

1. EDB Graduates. Economically disadvantaged businesses which graduate from the program by reaching their goals;

2. Outstanding EDB Firms. Economically disadvantaged companies which demonstrate outstanding performance beyond reaching their goals or which showed unusual effort, persistence, quality service or products, or creativity at overcoming obstacles;

3. Cooperative Agencies. Public agencies that show exceptional cooperation or success in working with economically disadvantaged companies;

4. Cooperative non-EDB firms. Companies in the private sector that demonstrate unusual efforts at promoting or buying from economically disadvantaged businesses or have been outstanding mentors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:53 (January 1997).

Chapter 9. Small Business Bonding Program

§901. Small Business Bonding Assistance

A. Program Activities C Louisiana Contractors Accreditation Institute (LCAI):

1. Eligibility. All EDB construction contractors who are certified by the Division of Economically Disadvantaged Business Development, Department of Economic Development, are eligible to attend the institute. However, other contracting businesses will be invited to attend the institute but they will not be able to receive the grant assistance or bond guarantee until they have been certified by the Economically Disadvantaged Business Development Program.

2. Standards and Procedures for Determining Course Content. The Director of Bonding Assistance Program (BAP) will once a year consult with the heads of the construction schools in Louisiana approved by the Board of Regents and Department of Education to ensure that current course content adequately prepares the students to run their construction firms in a businesslike manner.

3. Attendance. Attendance is open to only certified or potentially certified small and emerging business construction contractors. However, contractors must register for the institute he or she wishes to attend. Each contractor who successfully completes the LCAI will be issued a certificate of accreditation.

4. Accreditation Without Institute Attendance. An EDB firm may request to be accredited without attendance. The director of the BAP will conduct a review of the firm. If the contractor can present evidence he conducts business within standards set by Best Practices, the director may issue accreditation to the firm.

5. Accreditation by Test Only. Should the accreditation in Paragraph 4, supra, be denied, the firm may gain an accreditation without attending the institute by obtaining an acceptable score on the test administered during the institute.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:53 (January 1997), amended LR 24:430 (March 1998), LR 26:1575 (August 2000).

§903. Direct Bonding Assistance

A. Direct Bonding Assistance. All certified economically disadvantaged construction businesses that have been accredited by the LCAI and all other certified EDBs (nonconstruction) may be eligible for surety bond guarantee assistance not to exceed the lesser of 25 percent of contract or \$200,000 on any single project. All obligations whether contractual or financial will require the approval of the undersecretary.

B. Application Process

1. Application for surety bond guarantee assistance including contractor or business underwriting data as prescribed by surety companies shall be submitted by agent to the manager of the Bonding Assistance Program (BAP) and surety coordinator.

2. Manager of BAP or designee will:

- a. determine and document that business is eligible to participate in program;
- b. secure proof that project has been awarded to contractor or business, in the case of performance and payment bonds;
- c. determine worthiness of the project based on advice and input from surety coordinator and management construction/risk management company; and
- d. make recommendation to executive director as required pertaining to specific project.

C. Surety Companies

1. Criteria for Eligibility and Continuation in the Program. A surety company must have a certificate of authority from and its rates approved by the Department of Insurance, and appear in the most current edition of the *U.S. Treasury Circular 570*.

a. BAP, at its sole discretion, may refuse to recommend the issuance of further guarantees/Letters of Credit (LC) to a participating surety where the administration finds any of the following:

- i. fraud or misrepresentation in any of the sureties business dealings, BAP-related or not;
- ii. imprudent underwriting standards;
- iii. excessive losses (as compared to other participating sureties);
- iv. failure of a surety to consent to BAP audit;
- v. evidence of discriminatory practices; and
- vi. consideration of other relevant factors.

b. BAP, at its sole discretion, may refuse to recommend the issuance of further guarantees/LC to a participating surety where the Department of Economic Development finds that the surety has failed to adhere to prudent underwriting standards or other practices relative to those of other sureties participating in the BAP. Any surety which has been denied participation in the program may file an appeal, in writing, delivered by certified mail to the secretary of the Department of Economic Development, who will review the adverse action and will render the final decision for the department. Appeals must be received no later than 30 days from the issuance of the executive director's decision.

2. Subsuretyship. A lead or primary surety must be designated by those sureties who desire to bond a contract together. BAP will recommend a guarantee only to one

surety. This does not mean that surety agreements cannot be entered. In a default situation, BAP will recommend to indemnify only the lead or primary surety, which will have an indemnification agreement with its re-insurers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:430 (March 1998).

§905. Calculation of Guarantee Fee Deduction

A. Upon the contractor obtaining the RFP or contract for which BAP is guaranteeing a bid, payment or performance bond, the surety shall pay BAP a portion of the bond fee paid by the contractor.

1. The surety underwriter shall pay BAP a bond guarantee fee not to exceed 2 percent of the bond guarantee or LC.

2. BAP will deem acceptable bond premium charges which are:

- a. authorized by the state insurance department rules or by applicable statutes; and
- b. a minimum bond premium regardless of the contract price, if this minimum charge does not exceed \$250 and has been authorized by the appropriate state insurance department.

B. BAP will not recommend approval of an application for a bond guarantee where the surety makes any charge above the standard premium for the bond, except where other services are performed for the contractor and the additional charge or fee is permitted by the appropriate state insurance department.

C. BAP will not approve placement or finder's fees, fees for the use or attempted use of influence in obtaining or trying to obtain a surety bond guarantee or any part thereof. Agents and brokers shall be compensated by surety companies for their efforts through the commission system, based upon fees charged to the applicant contractor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:431 (March 1998).

§907. Management Construction/Risk Management Company

A. Surety may require contractor to engage a management construction/risk management company to do, at a minimum, an independent take off and review of all low bid projects and advise BAP of their findings. Surety may also require contractor to engage a management construction/risk management company to provide the following services:

1. review of the initial bond request for compatibility of the contractor with the scope of work as outlined in the solicitation;

2. job cost breakdown and bid preparation assistance;

3. monitor all projects once awarded. This will include a full (critical path) reporting throughout the life of the contract;

4. funds receipt and disbursement through a job-specific account on each project. This will include compliance with all lien waivers, releases and vendor payment verification;

5. make itself immediately available for project completion on any defaults at no additional fee to the project cost.

B. Management construction/risk management company engaged by contractor shall be pre-approved by BAP and surety. BAP shall not receive any portion of any fees paid to management construction/risk management company by contractor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:431 (March 1998).

§909. Underwriting a BAP Guaranteed Bond

A. In underwriting a BAP guaranteed bond, the surety is required to adhere to the surety industry's general principles and practices used in evaluating the credit and capacity; and is also required to adhere to those rules, principles, and practices as may be published from time to time by the BAP.

B. Once an application for a bond guarantee/LC is received from a contractor, a review will be conducted in order to determine whether the economically disadvantaged business is eligible for BAP's surety bond guarantee assistance. This review will focus on the presence of a requirement for surety bonds and other statutory requirements.

1. Bonds

a. There must be a specific contract amount in dollars or obligee estimate of the contract amount, in writing, on other than firm fixed price contracts.

b. There must be nothing in the contract or the proposed bond that would prevent the surety, at its election, from performing the contract rather than paying the penalty.

c. BAP, having guaranteed the bid bond, may refuse to recommend guarantee of the required payment and performance bonds when the actual contract price exceeds the original bid and the higher amount. In such an instance, the surety would either issue the payment and performance bond without BAP's guarantee, or suffer default in fulfilling the bid bond, which should result in claims against the surety and surety's claim against BAP.

2. Types of Bond Guarantees. BAP guarantees will be limited to certain bid, performance, and payment bonds issued in connection with a contract. Generally bid, performance, and payment bonds listed in the Contract Bonds section, *Rate Manual of Fidelity, Forgery and Surety Bonds*, published by the Surety Association of America, will be eligible for a BAP guarantee. In addition, the BAP guarantee may be expressly extended, in writing, to an ancillary bond incidental to the contract and essential to its performance.

3. Ineligible Bond Situations and Exceptions

a. If the contracted work is already underway, no guarantee will be issued unless the executive director consents, in writing, to an exception.

b. While it should not be a common occurrence, and is in fact to be discouraged, applications for surety bonds may occasionally be submitted for consideration after a job is in process. In such cases, the surety must submit, as part of the application, the following additional information:

i. evidence from the contractor that the surety bond requirement was contained in the original job contract;

ii. adequate documentation as to why a surety bond was not previously secured and is now being required;

iii. certification by contractor: list of all suppliers indicating that they are paid up to date, attaching a waiver of lien from each; that all labor costs are current; that all subcontractors are paid to their current position of work and a waiver of lien from each;

iv. certification by obligee that the job has been satisfactorily completed to present status; and

v. certification from the architect or engineer that the job is in compliance with plans and specifications; and is satisfactory to the present.

c. There are prepared forms published by the American Institute of Architects (AIA), which may be used for the purposes listed above.

C. The surety must satisfy to BAP that there is reasonable expectation that the economically disadvantaged business will perform the covenants and conditions of the contract with respect to which a bond is required. BAP's evaluation will consider the economically disadvantaged business' experience, reputation, and its present and projected financial condition. Finally, BAP must be satisfied as to the reasonableness of cost and the feasibility of successful completion of the contract. The BAP's determination will take into account the standards and principles of the surety industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:431 (March 1998).

§911. Guarantee

A. Amount of Guarantee. Providing collateral in the form of an irrevocable letter of credit to the surety may be posted on an individual project basis at the discretion of the Department of Economic Development.

B. Surety Bond Guarantee Agreement

1. Terms and Conditions

a. The *guarantee agreement* is made exclusively for the benefit of BAP and the surety; it does not confer any rights or benefits on any other party including any right of action against BAP by any person claiming under the bond. When problems occur on a contract substantive enough to involve the surety, the surety is authorized to take actions it deems necessary. Regardless of the extent or outcome of surety's involvement, the surety's services, including legal fees and other expenses, will be chargeable to the contractor unless otherwise settled.

b. Any agreement by BAP to guarantee a surety bond issued by a surety company shall contain the following terms and conditions:

i. the surety represents that the bond or bonds being issued are appropriate to the contract requiring them;

ii. the surety represents that the terms and conditions of the bond or bonds executed are in accordance with those generally used by the surety for the type of bond or bonds involved;

iii. the surety affirms that without the BAP guarantee to surety, it will not issue the bond or bonds to the principal;

iv. the surety shall take all steps necessary to mitigate any loss resulting from principal's default;

v. the surety shall inform BAP of any suit or claim filed against it on any guaranteed bond within 30 days of surety's receipt of notice thereof. Unless BAP decides otherwise, and so notifies surety within 30 days of BAP's receipt of surety's notice, surety shall take charge of the suit for claim and compromise, settle or defend such suit or claim until so notified. BAP shall be bound by the surety's actions in such matters;

vi. the surety shall not join BAP as a third party in any lawsuit to which surety is a party unless BAP has denied liability in writing or BAP has consented to such joinder; and

vii. the surety shall pay BAP a portion of the bond premium in accordance with BAP rules.

c. When contractor successfully completes bonded job a status inquiry report is signed by appropriate parties and is forwarded to surety's collateral department. Surety shall release standby letter of credit within 90 days of recordation of acceptance date shown on status inquiry report.

d. Variances. The terms and conditions of BAP's guarantee commitment or actual bond guarantee may vary from surety to surety and contract to contract depending on BAP's experiences with a particular surety and other relevant factors. In determining whether BAP's experience with a surety warrants terms and conditions which may be at variance with terms and conditions applicable to another surety, BAP will consider, among other things, the adequacy of the surety's underwriting; the adequacy of the surety's substantiation and documentation of its claims practice; the surety's loss ratio and its efforts to minimize loss on BAP guaranteed bonds; and other factors. Any surety which deems itself adversely affected by the executive director's exercise of the foregoing authority may file an appeal with the secretary of the Department of Economic Development. The secretary will render the final decision.

2. Reinsurance Agreement. In all guarantee situations, BAP agrees to reimburse the participating surety up to the agreed-upon percentage of any and all losses incurred by virtue of default on a particular contract. The participating surety agrees to handle all claims, with recoveries being shared on a pro rata basis with BAP. This includes reinsurance agreements between the surety and any other licensed surety or reinsurance company. In other words, no indemnity agreement can be made to inure solely to the benefit of the surety to recover its exposure on any bond guarantee by BAP without BAP participating in its pro rata share.

3. Default

a. Notice of Default. Ordinarily, BAP first is notified by the surety that a particular contractor is in trouble. Where BAP receives information from other sources indicating a contractor is in trouble, the information is to be relayed to the surety for its information and appropriate action.

b. Default Claims, Indemnity Pursuit, and Settlement

i. The sole authority and responsibility in BAP for handling claims arising from a contractor's default on a surety bond guaranteed by the BAP shall remain with the executive director and undersecretary relative to BAP's guarantee. The executive director and undersecretary will process and negotiate all claim matters with surety company representatives.

ii. In those situations where BAP's share is \$500 or less, the surety shall notify the contractor, by letter, of its outstanding debt with no further active pursuit undertaken by the surety for which BAP would be requested to reimburse.

iii. In those situations where BAP's share is over \$500 through \$2,500, the surety shall promptly develop financial background information on the debtor contractor. These findings will determine whether it is economically justified to further pursue indemnity recovery or to close the file. The surety shall strongly consider the use of a collection

agency versus attorneys on all indemnity actions, if it appears feasible and economically beneficial.

iv. In those situations where BAP's share is over \$2,500, the surety shall pursue recovery through its normal method, assessing and comparing the estimated cost of recovery efforts with the probable monetary gain from the effort prior to exercising its rights under LC.

v. The surety shall advise BAP of attempts made to contact indemnitor or to attach other assets, and the outcome of these attempts. The surety shall insure that BAP is credited with its respective apportionment of all recovery within 90 days of the recovery.

vi. At the culmination of subrogation and indemnity recovery efforts, the surety shall notify the obligor of the total amount outstanding. A copy of the notice sent to the contractor shall be promptly forwarded to the BAP. After recovery efforts have been exhausted, the surety and BAP will make final reconciliation on the defaulted case, and close the file on that particular contractor's project. Prior to closing the file, surety shall conduct a recapitulation of the account to assure that BAP has been correctly credited with all funds recovered from any and all sources.

vii. Under the terms and conditions of the surety bond guarantee agreement, the authority to act upon proposed settlement offers in connection with defaulted surety bonds lies with the surety, not with the BAP. A settlement occurs when a defaulted contractor and its surety agree upon a total amount and/or conditions which will satisfy the contractor's indebtedness to the surety, and which will result in closing the loss file. The surety must pay BAP its pro rata share of such settlement. BAP, immediately upon receipt of same, closes the file.

4. Reinstatement. A contractor's contractual relationship is with the surety company. Therefore, all matters pertaining to reinstatement must be arranged with and through the surety. BAP's contractual relationship is with the surety company only. Because of these relationships, BAP will neither negotiate nor discuss with a contractor amounts owed the surety by the contractor, or settlement thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:432 (March 1998).

§913. Audits

A. At all reasonable times, BAP or designee may audit the office of either a participating agency, its attorneys, or the contractor or subcontractor completing the contract, all documents, files, books, records and other material relevant to the surety bond guarantee commitments. Failure of a surety to consent to such an audit will be grounds for BAP to refuse to issue further surety guarantees until such time as the surety consents to such audit. However, when BAP has so refused to issue further guarantees the surety may appeal such action to the secretary of the Department of Economic

Development. All appeals must be in writing and delivered by certified mail within 30 days of receiving the executive director's written issuance of notice that no further guarantees will be issued. Otherwise the executive director's decision becomes final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:433 (March 1998).

§915. Ancillary Authority

A. The executive director, with the approval of the undersecretary, will have the authority to commit funds and enter into agreements which are consistent with and further the goals of this program. This authority would include, but not be limited to, designating a pool of funds upon which only a particular surety has recourse to, in the event of a contractor default.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:433 (March 1998).

Chapter 11. Promotion of Economically Disadvantaged Businesses

§1101. Promotion

A. Directory

1. Compilation. The division shall compile a directory of all certified EDBs and make it available to the businesses and governmental agencies.

2. Frequency of Publication. The directory shall be updated at least annually, based upon information provided by certified businesses. The division may issue updated directories more frequently.

3. Volume and Distribution. At least one copy of the directory will be made available to each state agency and educational institution, and copies will be provided to the state library. Additional copies may be made available to the public and governmental agencies as Division's resources permit.

4. Available Information. Public information concerning an economically disadvantaged business may be obtained by contacting the Division of Economically Disadvantaged Business Development during normal working hours.

B. Other Promotional Means. The Division will utilize other feasible means of promoting economically disadvantaged businesses, such as, but not limited to, the Internet, world wide web, electronic bulletin boards, trade shows, or private sector contacts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:54 (January 1997).

Chapter 13. Complaints and Investigations

§1301. Complaints and Investigation of Ineligibility

A. Right To File Complaint. Any individual, firm, or governmental agency which believes that a certified business does not qualify for certification may file a written, signed complaint with the division. The complaint must contain sufficient information for Division to conduct an investigation, including specific identification of the affected business, basis for the charge of ineligibility, and identification, mailing address, and telephone number of the complainant.

B. Right to Due Process. No disadvantaged business shall be decertified based upon a complaint, without first having had an opportunity to respond to the allegations; however, failure of the disadvantaged business to respond to the Division's notification within 30 calendar days of mailing from the Division may result in revocation of certification.

C. Investigative Procedure

1. Notification of Allegation. The Division shall notify the certified business which is subject of the complaint by certified mail, return receipt requested, of the allegation within 15 calendar days of the complaint's receipt.

2. Investigation Conducted. Within available resources, the Division shall investigate each complaint as promptly as possible. In no event shall the investigation extend beyond 60 calendar days from the date that the complaint was received.

3. Cooperation. The disadvantaged business enterprise shall cooperate fully with the investigation and make its staff and records available to Division, if requested. Insufficient cooperation may be grounds for concluding that the firm has not borne the burden of proving to the satisfaction of the Division that it is eligible for certification, resulting in revocation of certification.

4. Upon completion of the investigation, the Division's executive director shall make a determination and issue a written decision which either rejects the complaint or revokes the certification within 10 working days. A copy of the written decision shall be sent to the firm that was subject of the complaint, the complainant, and the director of the Division of State Purchasing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1760.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:54 (January 1997).

§1303. Grounds and Procedure for Reconsideration of Denial

A. Right to Petition. A decision by the Division to deny issuing certification, deny renewal of certification, or to revoke certification will be reconsidered after an applicant business has submitted a written petition for reconsideration to the executive director of Division.

B. Grounds. Grounds for petitioning Division to reconsider a denial or revocation of certification are that the Division of Economically Disadvantaged Business Development:

1. did not have all relevant information;
2. misapplied its rules;
3. otherwise made an error in reaching its original decision.

C. Right to Petition for Reconsideration. A petitioning business may appeal Division's decision to deny issuance of certification, to deny recertification, or to revoke certification. Only a firm which is subject of the denial or revocation has a right to petition for reconsideration.

1. Petition Submitted. The appellant business submits a written petition for reconsideration to the Division's executive director. If the petition has not been received by the Division within 30 days of the date of the letter announcing the denial or revocation, the Division's decision becomes administratively final.

2. The petition shall specify grounds upon which a reconsideration is justified and the type of remedy requested. The petition for reconsideration must also clearly identify a contact person, mailing address, telephone number. The petitioning firm may provide any additional information which would be pertinent to the issue.

3. Acknowledgment. Upon receiving a petition for reconsideration, Division shall acknowledge its receipt by sending certified mail, return receipt requested, to the petitioner within five working days.

4. Reconsideration. The Division shall consider the petition and review all pertinent information, including additional information provided by the appellant business. Division may conduct further investigation as necessary.

5. Notification of Decision. No later than 60 calendar days from receipt of the petition for reconsideration, the Division shall notify the petitioner by certified mail, return receipt requested, of its decision either to affirm the denial or revocation, with specific reason(s) of the grounds for the decision.

D. Final Decision. A decision to deny, revoke, or suspend certification following consideration of a petition for reconsideration is final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1762.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of

Title 19, Part II

Economically Disadvantaged Business Development, LR 23:55 (January 1997).

Title 19

CORPORATIONS AND BUSINESS

Part III. Minority Business Enterprises

Chapter 1. Statement of Policy/Legal Basis

§101. Statement of Policy

A. In accordance with the Louisiana Minority Business Enterprise Act of 1984 (R.S. 39:1951-1969 and 39:1981-1991 and the provisions of the Administrative Procedure Act, R.S. 49:950-970 as amended, the Office of the Governor, Office of Minority Business Enterprises, hereby adopts the following policies, rules and regulations relative to the Minority Business Enterprise Program, to be effective April 20, 1985. These regulations are both substantive and technical in nature, and are intended to specify the procedure for certification and as qualifications for a minority business enterprise; to provide for the effect of certification; to establish procedures for setting and attaining goals for minority business participation in state procurement activities; to provide for contracts requiring minority business participation, and the monitoring of agency and institutional contracts; and to establish penalties for interference and noncompliance. These regulations apply to all state departments, boards or commissions or educational institutions, created by the legislature or executive order within the executive branch of state government pursuant to Title 36, operating from funds appropriated, dedicated or self-sustaining; federal funds; or funds generated from any other source. These regulations do not apply to agencies of the judicial or legislative branches of state government, except to the extent that procurement or public works for these branches is performed by an executive branch agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969, R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:342 (April 1985).

Chapter 3. General Provisions

§301. Definitions

A. When used in these regulations, the following terms shall have meanings as set forth below.

1. *Small Business* A business entity organized for profit (including an individual, partnership, corporation, joint venture, association or cooperative), as defined by the Small Business Administration of the United States Government which, for purposes of size eligibility or other factors, meets the applicable criteria set forth in Part 121 of the Title 13 of the *Code of Federal Regulations*, as amended, and which has its principal place of business in Louisiana.

2. *Minority* A person who is a citizen or lawful permanent resident of the United States, domiciled in

Louisiana, and who is a member of one or more of the following groups:

a. *Black* Having origins in any of the black racial groups of Africa.

b. *Hispanic* Having origins in Mexico, Puerto Rico, Cuba, Central or South America, or in other Spain or Portuguese cultures, regardless of race.

c. *Asian American* Having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands

d. *American Indian or Alaskan Native* Having origins in any of the original peoples of North America.

3. *Minority Business Enterprise or Minority-Owned Business* A small business, organized for profit and performing a commercially useful function, which is owned and controlled by one or more minority individuals or minority business enterprises and which has its principal place of business in Louisiana.

a. *Commercially Useful Function* Responsible for execution of a contract or distinct element of work under a contract by actually performing, managing, and supervising the work involved.

b. *Owned and Controlled* Ownership of at least 51 percent of the firm, or in the case of a corporation, at least 51 percent of the voting stock, and controlling at least 51 percent of the management and daily business operations of the business.

4. *State Procurement Activity* The purchase, lease, or rental of any goods and/or services undertaken for any state governmental entity which is subject to these regulations. Procurement activities specifically include the following types of expenditures:

a. *Goods and/or Services* All purchases for supplies or services made under Chapters 16 or 17 of Title 39 of the Louisiana Revised Statutes of 1950, and all purchases of materials and supplies made under Chapter 10 of Title 38 of the Louisiana Revised Statutes of 1950, including selection of professional services under Part VII of Chapter 10 of Title 38.

i. *Personal Service* Work rendered by an independent contractor which requires the use of creative or artistic skills, such as graphic artists, sculptors, musicians, photographers and writers, or which requires the use of highly technical or unique individual skills or talents, such as paramedical, therapists, handwriting analysts, and expert witnesses for adjudication or court proceedings.

ii. *Professional Service* Work rendered by an independent contractor who has a professional knowledge of some department of learning or science used by its practical application of the affairs of others or in the practice of an art founded on it, including but not limited to lawyers, doctors, dentists, veterinarians, architects, engineers, landscape architects, and accountants. A profession is a vocation founded upon prolonged and specialized intellectual training which enables a particular service to be rendered. The word *professional* implies professed attainments in special knowledge as distinguished from mere skill. For contracts with a total amount of compensation of \$75,000 or more, the definition of *professional service* shall be limited to lawyers, doctors, dentists, veterinarians, architects, engineers, landscape architects, accountants, and any other profession that may be added by regulations adopted by the Office of Contractual Review of the Division of Administration.

iii. *Consulting Service* Work, other than professional or personal services, rendered by an independent contractor who possesses specialized knowledge, experience and expertise to investigate assigned problems or projects and to provide counsel, review, design, development, analysis or advice in formulating or implementing programs or services or improvements in programs or services, including but not limited to such areas as management, personnel, finance, and accounting, planning and feasibility studies, data processing, advertising and public relations.

b. *Public Works* Call work, including construction, highway and ferry construction alteration and improvements (other than ordinary maintenance) as provided in Chapter 10 of Title 38 or Chapter 1 of Title 48 of Louisiana Revised Statutes of 1950.

5. *Certified Minority Vendor* A minority business enterprise or minority-owned business as defined in §301.C, which has completed the certification process as provided in Chapter 5 of these rules.

6. *Certification* The process provided in Chapter 5 of these rules by which a minority-owned business or minority business enterprise is certified by the Office of Minority Business Enterprises (OMBE) as meeting the criteria for participation in the state's minority-owned business set-aside program.

7. *Non-Certified Minority Vendor* A minority business enterprise or minority-owned business, as defined in §301.C, which has not been certified for participation in the set-aside program under Chapter 5 but which has confirmed its minority status under the procedures specified in Chapter 19 of these rules.

8. *State Agency* Any agency, department, office division, board, commission, educational institution, correctional facility, or other governmental entity within the executive branch of the state of Louisiana.

9. *Set-Aside* Those purchases, contracts, contract classes, or public works which have been designated and specifically set-aside by the commissioner of administration

and/or the agency for awarding to minority-owned businesses or minority business enterprises under the provisions of Chapter 13 and Chapter 17 of these rules.

a. *Contract* Call types of state agreements, regardless of name of the purchase of supplies or services or for construction or major repairs. The term contract includes, but is not limited to, the following:

- i. awards and notices of award;
- ii. contracts of fixed price, cost, cost and fixed fee, or incentive type;
- iii. leases/rental agreements;
- iv. letter contracts;
- v. contracts involving job or task orders;
- vi. purchase orders;
- vii. any supplemental agreement of these types.

b. *Class of Contracts* Can entire group of contracts having a common characteristic.

10. *Annual Target Goal* The annual overall percentage of funds expected to be expended by each state agency for the procurement of all goods and services from minority-owned businesses, which has been established by the executive director of the Office of Minority Business Enterprises and the commissioner of administration in accordance with §1301 of these rules.

11. *Annual Plan* The annual document prepared by each department of state government in accordance with §1303 of these rules which details the means by which that entity shall attempt to achieve its established annual target goal.

12. *Contracting Base* The total annual funds of an agency which have been budgeted for the procurement of goods and services, other than capital outlay expenditures, for the subject fiscal year.

13. *Adjusted Fiscal Year (Target) Base* The contracting base for an agency, less any excluded estimated expenditures under Chapter 13 of these rules, against which the annual goal percentage is to be applied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969, R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:342 (April 1985).

Chapter 5. Certification Procedures

§501. Criteria for Minority Certification

A. Eligibility for participation in the minority set-aside program of the state is contingent upon certification that the minority-owned business or minority business enterprise meets the criteria defined in §301.A-C of these rules. It is the responsibility of any minority business wishing to participate in the minority set-aside program or otherwise to

receive minority vendor preference to complete the required certification process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969, R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:343 (April 1985).

§503. Distribution of Certification Applications

A. Certification materials will be distributed to interested minority vendors upon written or verbal request. Written requests for certification materials should be directed to the Office of Minority Business Enterprises, Box 94095, Baton Rouge, LA 70804-9095. Telephone requests should be directed to that same office at (225) 342-6491 (LINC 421-6491).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969, R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:343 (April 1985).

§505. Procedure

A. Companies must complete all portions of the certification materials and return them as specified in the following Subsections in order to be considered for certification under the minority set-aside program.

B. The following documents, plus any specified attachments, constitute the certification materials required from minority-owned companies interested in providing goods, services, or supplies under R.S. 39:1551-1755.

1. Certification Résumé (Form Number DA 3302: Revised 4/85) which must be completed and returned to the Department of Economic Development, Division of Minority and Women's Business Enterprise, Box 94185, Baton Rouge, LA 70804-9185. The following attachments must accompany the certification résumé when it is submitted:

a. legal ownership documents (articles of incorporation, partnership agreements, stock ownership/distribution agreements), financial statements of the company which indicate the ownership of major assets as well as the principal stockholders in the corporation (stock certificates), company balance sheets, federal income (business) tax statements for the past three years (or as applicable), state and city licenses (whichever applicable,) a copy of the bank signature card for the business, résumé of corporate shareholders and employees, organizational chart, equipment/building ownership and/or rental documents, supplier contract and relationship between distributor and prime contractor (if applicable), and any additional legal documents that would reflect ownership and control;

b. birth certificates indicating racial heritage must be provided for all minority vendors for which certification is being sought, regardless of the type of business structure;

c. all information requested on the certification résumé must be supplied, and the document itself must be notarized, as indicated, prior to submittal;

d. a waiver may be requested for documents information in §505.B.1.a not applicable to certain business structures when accompanied by a justification statement in the application package.

C. Misrepresentation of any of the information submitted is in violation of Act 713.

D. For minority vendors interested in providing professional, personal or consulting services under R.S. 39:1481-1526 or who are interested in construction contract work in connection with public works projects under R.S. 38:2184-2317, the following documents, plus specified attachments, shall constitute the required certification materials:

1. Certification Résumé (Form Number DA 3302 Revised 4/85) plus attachments as specified in §505.B.1.a above;

2. a listing, on company letterhead, of the subject areas of expertise of the vendor company; résumés of key personnel, and, a list describing previous work done in each subject area with sufficient identification of the client with a contact person (name, title, business address, telephone number) for each client listed, so that references might be obtained;

3. all of the above materials must be submitted directly to the Division of Minority and Women's Business Enterprise for certification of these vendors.

E. Newly established businesses (operating less than one year) and potential businesses seeking interim certification for the purpose of obtaining a loan through the Economic Development Corporation a business plan should be submitted with a cover letter requesting a waiver for documents that do not apply in §505.B and C.

F. The Louisiana Department of Transportation and Development will continue to certify, in accordance with its own procedures, minority-owned business contractors who wish to perform work under Chapter 1 of Title 48. The Division of Minority and Women's Business Enterprise will accept such certifications as equivalent to its own.

G. Additional documents/information may be requested of applicants upon review of their applications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:343-344 (April 1985), amended by the Department of Economic Development, Division of Minority and Women's Business Enterprise, LR 14:350 (June 1988), LR 15:960 (November 1989).

§507. Submittal of Information Requested

A. It is the responsibility of the applying vendor to provide all the information requested on each of the specified certification documents. Failure to provide adequate data may result in rejection of the application to participate in the minority set-aside program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:344 (April 1985).

§509. Certification Documents Inquiries/Assistance

A. Minority vendors with questions about the certification process and/or the information requirements of the certification documents are encouraged to contact the Office of Minority Business Enterprises prior to submittal of documents, to obtain assistance that may prevent rejection of the certification application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:195-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:344 (April 1985).

§511. Notification of Minority Certification Decision

A. Certification of vendors as eligible to participate in the minority set-aside program requires the approval of several governmental agencies other than OMBE. To enable all governmental entities ample time to review each certification request, vendors will be notified by OMBE of the certification decision within 20 calendar days from submittal of the application materials.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:344 (April 1985).

§513. Disapproval of Minority Certification

A. In the event that a request for certification is disapproved, the notification from OMBE will specify the reasons for disapproval.

B. Vendors may appeal certification disapproval, unless such disapproval is based upon verified ineligibility of the vendor as a minority-owned business under the Minority Business Enterprises Act. The applicant business vendor must file the appeal for reconsideration in writing with OMBE within 30 calendar days of mailing of the decision, or the decision shall become administratively final. The vendor must specify within the petition for reconsideration the grounds upon which an appeal of the decision is justified, and must clearly indicate the type of remedy being requested. The request for reconsideration must also clearly identify a contact person within the place of business, and may provide any additional information which the applicant has to offer which might affect the reconsideration decision.

C. Upon receipt of a petition for reconsideration, OMBE shall review its original decision, any additional information provided by the applicant business, and may conduct further investigation as necessary. OMBE shall respond to the request within 30 calendar days of receipt of the petition for reconsideration, via certified mail, return receipt requested. The response from OMBE shall contain specific reason(s) why the disapproval decision has been upheld or overturned. In the event that the disapproval is rescinded as the result of

an appeal, OMBE will, in its decision notification to the vendor, indicate what steps must be taken to complete the certification process.

D. A decision to deny certification following consideration of a petition for reconsideration is administratively final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:344 (April 1985).

§515. Verification of Information Submitted

A. OMBE reserves the right to verify any and all information submitted by a vendor on its application materials, in whatever manner seems most appropriated by OMBE, including but not limited to on-site visits, telephone interviews, or other records research.

B. OMBE further reserves the right to make unscheduled visits to the place of business of any vendor participating in the Minority Business Enterprises Program, and to conduct interviews with staff or otherwise to observe and review the operations of any vendor, for the purposes of confirming or verifying minority ownership and/or operational control.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:344 (April 1985).

§517. Change in Minority Ownership/Control

A. Vendors shall notify OMBE immediately in writing in the event of any changes in ownership, control or operations which might impact continued eligibility of the vendor to participate as a minority-owned business. Failure to do so may result in immediate suspension of certification or decertification of the vendor and dissolution of any set-aside contracts that may have been received during the period of the change. Failure to report a change in minority ownership which results in ineligibility of the business will result in a fine of not less than \$1,000. If the business has continued to operate as a minority-owned business and has continued to participate inappropriately in the minority set-aside program, a fine of not less than \$5,000 and immediate decertification shall result.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:344 (April 1985).

§519. Application Denied or Withdrawn

A. An applicant which has withdrawn its application or whose application has been denied, may file a new application only if there has been a change in ownership, control or organization of the business. No business may file more than two applications in any calendar year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:344 (April 1985).

§521. Liability

A. Certification as a minority business enterprise does not constitute compliance with any other laws or regulations (including contractor registration or prequalification requirements), and does not relieve any firm of its obligations under other laws or regulations. Certification as a minority business enterprise also does not constitute any determination by the Office of Minority Business Enterprises that the firm is responsible or capable of performing any work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:344 (April 1985).

§523. Exceptions to Vendor Certification Requirements

A. The commissioner of administration, upon the recommendation of the executive director of OMBE, may waive in writing the small business portion of the certification requirements, so that a minority-owned business meeting all other certification criteria may participate in the set-aside program or otherwise obtain minority preferences. Such determination shall be made on a case-by-case basis, and prior written approval of the commissioner must be obtained before the vendor shall be deemed eligible for certification.

B. When a federal requirement that is a prescribed condition for allocation of federal funds to the state of Louisiana sets forth criteria for certification which are in conflict with those in these rules, then a business which is not otherwise certified for participation in the minority business enterprise program, but meets the particular federal criteria, shall be certified as a minority business enterprise for the particular projects(s) funded under those requirements, upon submittal to the Office of Minority Business Enterprise of sufficient documentation to show that said business meets the federal criteria.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:344 (April 1985).

Chapter 7. Recertification Procedures

§701. Annual Recertification

A. Certification to participate in the women's set-aside program shall be valid for one calendar year. Thirty days prior to expiration of any woman-owned business certification, DMWBE will notify the firm that recertification has become due.

B. Vendors wishing to participate in the women's set-aside program must submit a notarized Affidavit of Recertification, which may be obtained from DMWBE, along with any other missing documents according to the provisions specified in LAC 19:I.303.B and C.

C. It is the responsibility of the business owner to notify the office in writing of any changes in ownership or location of the business or telephone number during the certification calendar year, which begins on the date of certification.

D. Changes in commodities or services for which the vendor wishes to receive bids must be submitted via letter from the vendor to both State Central Purchasing and DMWBE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1731-1738.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:344 (April 1985), amended by the Department of Economic Development, Division of Minority and Women's Business Enterprise, LR 15:959 (November 1989).

§703. Failure to Recertify

A. Women business enterprises which make no effort at recertification as of one month from the recertification notification date shall be deleted from the active vendor files and shall be ineligible to participate in the state programs for women business owners and/or any set-aside awards until such time as recertification has been completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1731-1738.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:344 (April 1985), amended by the Department of Economic Development, Division of Minority and Women's Business Enterprise, LR 15:960 (November 1989).

Chapter 9. Complaints Concerning Certified Vendors

§901. Ineligibility Complaints

A. Any individual, firm, agency, or other person who believes that an applicant certified as a minority business enterprise does not qualify under the standards of eligibility for certification may file a written, signed complaint with the Office of Minority Business Enterprises. Such complaints must contain sufficient information for the office to determine the validity of the complaint, including specific identification of the affected applicant business; the basis for the belief that the applicant does not meet eligibility criteria; and an identification of the complaint.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:344 (April 1985).

§903. Investigation of Complaint

A. Within available resources, OMBE shall investigate each complaint as promptly as possible. In no event shall

any investigation period exceed 60 calendar days from receipt of the complaint.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:345 (April 1985).

§905. Notification of Complaint

A. OMBE shall notify the subject minority-owned business of the details of the complaint by certified mail, return receipt requested, within ten calendar days of complaint receipt.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:345 (April 1985).

§907. Response to Complaint

A. No minority business enterprise shall be decertified based upon a complaint, without first having an opportunity to respond to the complaint; however, failure of the minority-owned business to respond to notification of the complaint within 20 calendar days of mailing from OMBE may result in suspension of certification or decertification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:345 (April 1985).

§909. Cooperation in Complaint Investigation

A. The minority business enterprise shall cooperate fully in any complaint investigation, and shall make its staff and/or records available to assist OMBE in its investigations as necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:345 (April 1985).

§911. Temporary Suspension

A. The director of OMBE may suspend the certification of the affected minority business enterprise pending the outcome of the investigation, after providing the firm with seven calendar days notice via certified mail, return receipt requested, to show cause why suspension should not occur. Any such suspensions shall last not more than 60 calendar days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:345 (April 1985).

§913. Complaint Investigation Decision

A. Upon completion of the investigation, the director of OMBE shall issue a written decision, either rejecting the complaint or revoking certification of the minority business

enterprise. The written decision shall be distributed to both the minority business enterprise involved and to the complainant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:345 (April 1985).

Chapter 11. Decertification Procedures

§1101. Certification Denied

A. Decisions by OMBE to deny certification, deny renewal of certification, or to revoke certification will be reconsidered upon submittal by the applicant business of a written petition for reconsideration on the following grounds:

1. the Office of Minority Business Enterprises did not have all relevant information;
2. the Office of Minority Business Enterprises misapplied its rules; or
3. the Office of Minority Business Enterprises otherwise made an error in reaching its original decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:345 (April 1985).

§1103. Petition for Reconsideration

A. Such petitions for reconsideration must be received by OMBE within 30 calendar days of mailing of the original decision, or the decision becomes administratively final. The reconsideration appeal must contain specific information on why the decision is believed to be in error, and must specify the remedy being sought by the applicant business. In addition, the reconsideration appeal must identify a contact person within the firm and must supply any additional information which the applicant has to offer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:345 (April 1985).

§1105. Petition Reconsidered or Reviewed by (OMBE)

A. Upon receipt of a petition for reconsideration, OMBE shall review its original decision, plus any additional information provided by the applicant, and may conduct further investigations as necessary. OMBE shall respond to the request for reconsideration within 30 calendar days of receipt of the petition for reconsideration, via certified mail, return receipt requested. The response shall contain specific reason(s) why the decision has been upheld or overturned.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:345 (April 1985).

§1107. Decision of Reconsideration Petition

A. A decision to deny, revoke, or suspend certification following consideration of a petition for reconsideration is administratively final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:345 (April 1985).

Chapter 13. Minority Participation in State Procurement Activity

§1301. Establishment of Annual Goals for Agencies

A. The director of the Office of Minority Business Enterprises, with the concurrence of the commissioner of Administration, shall establish overall annual goals for participation by certified minority businesses in the procurement of all goods and services by each state agency, based upon the estimated expenditures by category in the budget request documents. These goals shall be in the form of overall annual percentages of expenditures which are expected to be awarded to certified minority businesses. The annual period shall be the fiscal year. The overall annual goals will be adopted by OMBE each year not later than June 15, and shall be distributed to the head of each agency and educational institution on or before June 30 of each year.

B. Upon receipt of the annual goal from OMBE, agencies shall have 15 calendar days in which to respond to OMBE with suggested revisions to the established annual target percentage.

C. Within 15 calendar days of date of agency submittal, OMBE shall establish a new annual target percentage or reconfirm the percentage established for the agency.

D. The director of OMBE shall review the overall annual goal for each agency and educational institution at the conclusion of each fiscal year, and with the concurrence of the commissioner of administration shall establish the goal for the upcoming year. In no case shall the goal exceed 10 percent of the estimated annual expenditures for goods and services. Factors to be considered in establishing the new goal shall include the number of certified minority businesses, the success of the agency in attaining the goals over the past year, the population of minorities within the state as a whole, and such other relevant information as may be available.

E. The annual overall goals of each state agency for the period from September 1, 1984 through June 30, 1985, shall be 10 percent minority owned business participation in the procurement of all goods and services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:345 (April 1985).

§1303. Preparation by Agencies of Annual Plan for Attainment of Annual Goal

A. On an annual basis, each state agency shall formulate a plan for setting aside particular contracts or classes of contracts for award to minority-owned businesses, in a total dollar amount sufficient to attain its overall annual goal in the procurement of goods and services.

B. The annual plan must include Form DA 6201 and must be filed with the Office of Minority Business Enterprises by July 30 of each year.

C. The annual minority set-aside plan prepared by each state agency shall include, but not be limited to, the following information:

1. a narrative statement, affirming that the agency or institution is committed to the use of minority business enterprises in procurement of goods and/or services to the maximum extent possible;

2. a narrative description of the method used to encourage minority business enterprise participation in the public works and procurement contracting process of the agency;

3. a summary forecast, by expenditure category, itemizing the annual fiscal year plan amounts calculated by the agency from application of its annual goal. This summary forecast shall be submitted on Form DA 6201. This form may be ordered from the Forms Management Office within the Division of Administration;

- a. the following general categories or expenditures shall be included by each agency in its calculation of the fiscal year base:

- i. all estimated expenditures in the supplies category;

- ii. all estimated expenditures in the acquisitions category;

- iii. the segment of estimated expenditures within the category of professional services that is governed by the provisions of R.S. 39:1481, et seq.;

- iv. those portions of estimated expenditures within the category of operating services that are governed by Chapters 16 and 17 of Title 39 of the Revised Statutes of 1950;

- b. examples of goods or services that may not be included in establishment of the base include salaries and related benefits, postage, interagency expenditures, insurance, procurement of data processing hardware, and off-the-shelf software, contracts for fiscal intermediary services, payment for utility services, travel, printing services, interns or resident contracts, contracts for advertisements in connection with bidding requirements, or other items justified by the agency and approved for exclusion by OMBE. In any event, professional services

shall include only those contracts which involve independent contractor relationships;

4. a forecast of the contracts to be set-aside for award by the agency to minority-owned businesses, including estimated monetary value involved (if known,) the number and types of contracts to be awarded, and the expected solicitation dates;

5. a narrative description of the participation requirements of minority business enterprises in each contract or class of contract expected to be awarded during the coming fiscal year;

6. a statement of the method by which records of minority business enterprise participation in the contracting records of the agency will be kept, and a description of the method the agency or institution will use to achieve the overall annual goals;

7. a narrative description of the method the state agency will use to require compliance by bidders for its contracts with applicable minority business enterprise participation requirements.

D. The head of each department shall certify that the information contained in the annual plan is correct, to the best of his/her knowledge, at the time of submittal.

E. In the event that the agency changes its plan to fulfill its assigned minority percentages, a new minority business annual plan (Form DA 6201) shall be submitted. This new plan shall be clearly labeled as an updated plan, and shall supersede any plan previously submitted for that agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1069 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:346 (April 1985).

Chapter 15. Designation and Setting-Aside of Procurement Activities for Minority-Owned Business Participation

§1501. Identification of Goods and Services

A. All governmental bodies, in preparation of the annual plan, shall identify those goods and services which are eligible for inclusion in the minority-owned business set-aside program. For agencies on FACS, the State Central Purchasing Office of the Division of Administration shall compile this information on procurement of Chapter 17 goods and services through its Contracts Management System, and shall forward this data to each state agency for inclusion in the annual plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:346 (April 1985).

§1503. Publication of Minority Business Directory

A. The Office of Minority Business Enterprises, in cooperation with the business development agencies throughout the state and the Small Business Administration, shall identify, through the certification process described in these rules, minority-owned businesses interested in participating in the set-aside program. Information generated from the certification process shall be compiled by OMBE in the form of a Minority-Owned Business Directory as described in Chapter 23 of these rules. OMBE will forward this directory to purchasing agents in each state agency for use in determining categories or classes of contracts to be set-aside for minority business participation. In addition, such data shall be stored on the computer utilized by the State Central Purchasing Office, to allow for access and retrieval for the purposes of identifying prospective bidders and soliciting competitive bids for Chapter 17 procurement activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:346 (April 1985).

§1505. Minority Business Directory Usage

A. The State Central Purchasing Office and the individual departments shall refer to the Minority-Owned Business Directory and the computer listing of minority-owned businesses identifying prospective vendors and areas of potential set-asides during the solicitation of procurement activity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:346 (April 1985).

§1507. Goods, Services and Public Works Set-Aside

A. All governmental entities shall designate as set-asides sufficient purchases of goods, services, and public works, for exclusive participation by minority-owned businesses, to attain the established annual target goal. For Chapter 17 procurements by agencies on FACS, such designation may be made on a class of contracts/commodities basis to the State Central Purchasing Office at the beginning of each fiscal year, so that all purchases for that commodity/class of commodities will be set-aside for minority participation. Alternatively, agencies may elect to make such designations on a contract by contract basis throughout the year, based upon their individual progress towards attainment of the annual goal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:346 (April 1985).

§1509. Applicable Laws

A. All procedures for procurement of goods and services from minority-owned businesses, including the solicitation

of bids and/or requests for proposals, shall be made in accordance with all applicable laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:346 (April 1985).

§1511. Bid Identified as Set-Aside

A. For purchases made through State Central Purchasing, the agency for whom the purchase is being made shall clearly label the request for issuance of an Invitation to Bid as a "MINORITY BUSINESS SET-ASIDE." State Central Purchasing shall then proceed to advertise the bid as a minority set-aside on behalf of the requesting agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:346 (April 1985).

§1513. Bid Proposal Advertisements

A. For procurement activities which are not handled through State Central Purchasing, but which have been designated as set-asides by the agency, the agency shall clearly indicate in all advertisements relative to solicitation of bids or proposals that the purchase of goods or services has been set-aside for the exclusive participation of certified minority businesses under R.S. 39:1951-1969 and R.S. 39:1981-1991. This notice shall appear in bold type as the heading of all such advertisements, and should be repeated within the main body of the advertisement. Notice of the minority set-aside nature of the contract which is contained solely in the body of the text shall not be sufficient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:346 (April 1985).

§1515. Agency Receipt and Evaluation of Minority Set-Aside Bids

A. Agencies shall evaluate all reasonable bids for proposals received from certified minority-owned businesses in response to a set-aside advertisement. Bids or proposals received shall be evaluated in accordance with the terms of the Invitation to Bid or the Request for Proposals and normal purchasing standards. Bids from vendors who have not been certified in accordance with the procedures of Chapter 5 of these rules shall not be considered in response to a set-aside contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:346 (April 1985).

§1517. Designation of a Minority Set-Aside Bid

A. In the event there are three or more certified minority vendors in a specific category, and there is a reasonable expectation of receiving three or more bids, the bid may be designated as a set-aside for exclusive participation by certified minority-owned businesses.

B. The bid document must clearly specify that the bid is a set-aside by containing, in bold type, the following statement: this proposal has been designated as a minority-owned set-aside. To be eligible for award, bidders must be certified prior to award in accordance with Act 653 of the 1984 Legislative Session. If the bid is estimated to be in excess of \$5,000, the agency must advertise in accordance with R.S. 39:1594(C).

C. All advertisements for the bids must contain, in bold face type, the following statements in the heading: the commodity(ies) specified below has (have) been designated as a minority-owned set-aside and only those vendors certified prior to award shall be considered.

D. In the event there are not three or more certified minority vendors in a specific category, but the Office of Minority Business Enterprise certifies that there are not three such minority-owned businesses in Louisiana that are certified, nor are there three such minority-owned businesses which could be certified in the state of Louisiana, then the bid may be designated as a set-aside for the exclusive participation of certified minority-owned business as long as one certified minority vendor exists in the category being bid. The bid(s) received must conform with §1701.D and §1703.A relative to not exceeding 15 percent of what could have been obtained via open-market competition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:346 (April 1985), amended LR 13:342 (June 1987), LR 13:497 (September 1987).

Chapter 17. Criteria for Procurement of Goods and Services

§1701. Criteria for Procurement of Goods and Services

A. Bid Specifications for Chapter 17 Goods and Services: When the award of the contract for the purchase of goods and/or services has been set aside for minority-owned business participation, and at the time Invitations to Bid are released there are not at least three certified minority-owned businesses available to bid on the contract or class of contracts or class of contracts involved, or the contract has not been set-aside in accordance with §1517.D of these rules and regulations, the award shall be made on the basis of open competitive bidding under the Louisiana Procurement Code.

B. The award shall be made to a certified minority-owned business when the price bid by such a business is within the lower of 10 percent of \$10,000 of the otherwise lowest responsive and responsible bidder whose bid meets

the requirements and criteria set forth in the Invitation to Bid.

C. In the event that there is no certified minority-owned business responding whose bid is within the range specified above, the award shall go to the otherwise lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the Invitation to Bid, without regard to minority status.

D. In all cases, the state agency or educational institution actually making the award, either under open competitive bidding or under the set-aside provisions of this Title, may reject all bids if it is determined, based upon reasons provided in writing, that such action is in the best interest of the state. One reason, but not the only reason, for rejection of all bids when the contract has been set-aside under the set-aside provisions of this Title, shall be if prices obtained exceeded more than 15 percent of what could have been obtained via open-market competition.

Affidavit of Minority Status

STATE OF LOUISIANA

PARISH OF _____:

BEFORE ME, the undersigned authority, personally came and appeared _____, who stated, under oath, that s/he is a citizen or lawful permanent resident of the United States and is of minority heritage as defined at R.S. 39:1952(12).

AFFIANT

sworn to and subscribed before me this ____ day of _____, 19__, at _____, Louisiana.

NOTARY

Affidavit of Recertification

STATE OF LOUISIANA

PARISH OF _____:

BEFORE ME, the undersigned authority, personally came and appeared _____, who stated, under oath, that s/he is owner of a certified minority-owned business as provided at Chapter 19 of Subtitle III, of Title 39 of the Louisiana Revised Statutes as of the ____ day of _____, 19__, and that s/he appears herein for the purposes of attesting to the fact that all information contained in the original certification is still true and correct, and that s/he remains the owner of the minority-owned business, _____, as appears in

(Name of Business)

the files of the Office for Minority Business Enterprise.

AFFIANT

sworn to and subscribed before me this ____ day of _____, 19__, at _____, Louisiana.

NOTARY

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:347 (April 1985), amended LR 13:343 (June 1987).

§1703. Consulting Services

A. Criteria for requests for proposal for consulting services under Chapter 16. When the award for a contract for consulting services has been set-aside for minority-owned business participation, and at the time request for proposals are to be distributed, there are not at least three certified minority-owned businesses available to bid on the contract or class of contracts involved or the contract has not been set-aside in accordance with §1517.D of these rules and regulations, the award shall be made on the basis of open competitive bidding under the Louisiana Procurement Code.

B. Proposals submitted by certified minority-owned businesses shall be credited with such additional amounts as would amount to 10 percent of the maximum number of points which could be awarded to any single proposal under the criteria set forth in the Request for Proposals.

C. The maximum number of additional points specified above shall be awarded only where the certified minority-owned business is the prime contractor under the contract, and retaining and performing at least 51 percent of the dollar value of the work to be contracted.

D. For otherwise qualified proposals, where the certified minority-owned business participates in less than 51 percent of the total dollar value of work, the number of additional points to be credited shall be calculated by multiplying the maximum additional points by the dollar value percent participation of the minority-owned business.

E. In all cases, the state agency or educational institution actually making the award, either under open competitive bidding or under the set-aside provisions of this Title, may reject all proposals if it is determined based upon reasons provided in writing that such action is in the best interest of the state. One reason, but not the only reason, for rejection of all bids when the contract has been set-aside under the set-aside provisions of this Title, shall be if prices obtained exceeded more than 15 percent of what could have been obtained via open-market competition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:347 (April 1985), amended LR 13:497 (September 1987).

§1705. Public Work Bids \$200,000 or More

A. Construction of Public Work (\$200,000 or more.) When a contract for the construction of public works in an amount of \$200,000 or more is to be awarded by the Facility Planning and Control Section of the Division of Administration on the basis of competitive bidding, the award shall be made to a certified minority-owned business when the price bid by such as business is within five percent

of the otherwise lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the Invitation to Bid.

B. The award shall be made as above only where the certified minority-owned business is the prime contractor under the Invitation to Bid.

C. In the event that a minority-owned business is awarded a contract by bidding within the range as specified above, the minority-owned business shall adjust its bid to correspond to the bid of the otherwise lowest responsive and responsible bidder that would have been awarded the contract. In no case shall the adjustment be by more than 5 percent.

D. In the event that there is no certified minority-owned business whose bid is within the range specified above, the award shall go to the otherwise lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the Invitation to Bid, without regard to minority status.

E. Contracts awarded to minority-owned businesses pursuant to these rules shall not exceed 10 percent of the total dollar amount of the contracts awarded by Facility Planning and Control.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:347 (April 1985).

§1707. Construction Bids under \$200,000

A. Construction of Public Works (under \$200,000). The Facility Planning and Control Section of the Division of Administration shall set aside each fiscal year, for exclusive participation by minority-owned businesses, 10 percent of all contracts for the construction of public works less than \$200,000 to be awarded by competitive bidding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:347 (April 1985).

Chapter 19. Noncertified Vendor Participation

§1901. Noncertified Vendor Participation

A. Agencies may include in their annual plans and may count towards attainment of their annual plan amounts any contracts for the above specified types of procurement activity with minority vendors who are not certified to participate in the minority set-aside program, but who are available to conduct business with the state, subject to submittal of a sworn affidavit which attests to the fact that the vendor does meet the definition of a minority business under the Act. For the purposes of this portion of the rules, completion of Part I, portions of Part II, and all or Part XIV of the Certification Résumé (Form DA 3302) shall constitute the required sworn affidavit. Agencies may obtain copies of

Form DA 3302 from State Central Purchasing for this purpose as needed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:347 (April 1985).

§1903. Liability

A. It is the responsibility of the individual agencies to ascertain the possibility of minority status of a vendor on any particular purchase, contract, or procurement activity handled directly by the agency. At the time the procurement activity is initiated within the agency, the purchasing agent/buyer should ensure that the vendor completes the above referenced sworn affidavit. Upon receipt of the sworn affidavit from the vendor, the agency shall submit the affidavit, plus any supporting documentation, to OMBE for review and approval by the director.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:347 (April 1985).

§1905. Small Business Criteria Waived

A. As with certified minority vendors, the commissioner of administration may waive the small business criteria requirements for a minority-owned business which meets all other criteria of the Act. The executive director of OMBE shall be responsible for securing approval from the commissioner of administration as necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:347 (April 1985).

§1907. Annual Target Goals with Non-Certified Minority Vendor

A. Upon receipt of notification of OMBE and the commissioner's approval of minority status for the vendor, the agency may count expenditures made under the affected contract towards the established annual target goals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:347 (April 1985).

§1909. Certification Procedures

A. Approval of minority status for a vendor under these provisions of the rules DOES NOT CONSTITUTE certification of the vendor to participate in any set-aside award programs operated by the state under the Minority Business Enterprise Act, nor does it enable the affected vendor to obtain the minority preferences discussed under Chapter 19 of these rules. CERTIFICATION AS A MINORITY VENDOR FOR SET-ASIDE PURPOSES AND FOR MINORITY PREFERENCES CAN ONLY BE

OBTAINED VIA THE PROCEDURES OF CHAPTER 5, OF THESE RULES.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:347 (April 1985).

Chapter 21. Reports

§2101. Quarterly Reporting

A. All state agencies, boards, and commissions of the executive branch of state government shall submit to OMBE, on a quarterly basis, a Minority Business Report (Form DA 6202) illustrative of the minority business enterprise activity conducted by that agency during the previous quarter. The report must contain the signatures of both relevant department head and the preparer.

B. Quarterly reports are due in the Office of Minority Business Enterprise on the twentieth of the month following the end of the quarter being reported. Agencies may order supplies of Form DA 6202 from the Forms Management Office within the Division of Administration.

C. For the purposes of these rules, quarterly activity shall be reflective of the following time periods:

First Quarter	July 1CSeptember 30
Second Quarter	October 1CDecember 31
Third Quarter	January 1CMarch 31
Fourth Quarter	April 1CJune 30

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:347 (April 1985).

§2103. Annual Report to Legislature

A. Not later than August 31 of each year, OMBE shall submit to the Governor and the legislature a cumulative annual report, detailing the progress being made throughout the state towards minority participation in the state's procurement activities.

B. This report shall contain, for each department, a detailed listing of minority participation by category of expenditure, including a comparison of actual activity to the established annual plan amounts. This data shall be collected from the quarterly reports submitted by the agencies, and the annual report shall clearly indicate that all data is as reported by the agencies themselves.

C. The annual report shall also contain a separate listing of those agencies that have not complied with the reporting requirements of these rules, and a listing of agencies in which minority participation in procurement activity is below five percent.

D. The report shall contain a narrative description of activities undertaken by OMBE and/or other state agencies

to encourage minority participation in the state's procurement activities, and an identification of barriers to full minority participation with suggested corrective measures.

E. OMBE shall also include performance indicators, reflecting the total number of certified minority vendors; the percentage increase or decrease in minority vendor certifications completed during the previous year; and such other data as might allow the legislature and the governor to assess the effectiveness of the minority set-aside program in achieving its intended goals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:348 (April 1985).

Chapter 23. Directory of Minority Businesses

§2301. Directory of Certified Minority Business Enterprises

A. The Office of Minority Business Enterprises will compile, from the certification applications it processes, a directory of all minority business enterprises certified for participation in the set-aside program. In addition, the directory will include those minority vendors which have been certified for participation in federally funded projects.

B. The directory shall be updated at least semi-annually, based upon the information provided by minority vendors during the intervening period. The Office of Minority Business Enterprises may issue supplements to the directory on a more frequent basis, as needed.

C. One copy of the Minority-Owned Business Directory will be made available to each state agency and educational institution at no charge, and copies will be provided to the state library at no charge. Additional copies for state agency use and/or for use by the general public and other interested individuals will be available for purchase at a reasonable cost.

D. State agencies contracting directly with a purported minority business enterprise shall have the responsibility of insuring that the firm has been properly certified, or that a sworn affidavit as described in Chapter 19 of these rules has been obtained.

E. Information concerning the status of a firm as a minority business enterprise may be obtained by contacting the Office of Minority Business Enterprises during normal working hours (8 a.m. through 5 p.m., Monday through Friday) at (225) 342-6491 (LINC 421-6491). Callers should be prepared to fully identify the corporate name of the firms, as well as the principal officers and/or owner of the firms, when requesting telephone information from OMBE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

Title 19, Part III

HISTORICAL NOTE: Promulgated by the Office of the
Governor, Division of Administration, Office of Minority Business

Enterprises, LR 11:348 (April 1985).

Title 19
CORPORATIONS AND BUSINESS
Part V. Secretary of State

Chapter 1. Powers of Attorney

§101. Uniform Statutory Form Power of Attorney for Military Personnel

A. The form to be used for the Uniform Statutory Form Power of Attorney for Military Personnel, as provided in R.S. 9:3862, shall be as follows:

STATUTORY FORM POWER OF ATTORNEY
FOR MILITARY PERSONNEL

STATE OF LOUISIANA

PARISH OF _____

BE IT KNOWN THAT on this _____ DAY OF _____ in the year of our Lord Nineteen Hundred and _____ before me, Notary Public in and for said Parish and State, duly commissioned and qualified as such, personally came and appeared _____,

who declared that he is a member of the _____, a branch of the military designated in R.S. 29:3861, and did execute and sign the following Statutory Form Power of Attorney.

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I _____ (YOUR NAME AND ADDRESS)
appoint _____

(NAME AND ADDRESS OF THE PERSON APPOINTED, OR OF EACH PERSON APPOINTED IF YOU WANT TO DESIGNATE MORE THAN ONE) as my agent (Attorney-in-fact) to act for me in any lawful way with respect to the following initialed subjects:

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (M) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS.

TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT, YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.

INITIAL

- ___(A) Tangible personal property transactions.
- ___(B) Stock and bond transactions.
- ___(C) Commodity and option transactions.
- ___(D) Banking and other financial institution transactions.
- ___(E) Business operating transactions.
- ___(F) Insurance and annuity transactions.
- ___(G) Estate, trust, and other beneficiary transactions.
- ___(H) Claims and litigation.
- ___(I) Personal and family maintenance.
- ___(J) Benefits from social security, medicare, medicaid, or other governmental programs. or civil or military service.
- ___(K) Retirement plan transactions.
- ___(L) Tax matters.
- ___(M) ALL OF THE POWERS LISTED ABOVE.

YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL LINE (M)

SPECIAL INSTRUCTIONS:

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTION LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

This Power of Attorney will:

- ___continue to be effective even though I become incapacitated.
- ___terminate when I become incapacitated.

EXERCISE OF POWER OF ATTORNEY WHERE MORE THAN ONE AGENT DESIGNATED

If I have designated more than one agent, the agents are to act:

- ___separately.

CORPORATIONS AND BUSINESS

____jointly.

I agree that my third party, who receives a copy of this document, may act under it. Revocation of the Power of Attorney is not effective as to a third party until the third party has actual knowledge of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this Power of Attorney.

(YOUR SIGNATURE)

(YOUR SOCIAL SECURITY NUMBER)

Done and passed at the Parish of _____, Louisiana, on the day and date first above written, in the presence of _____ and _____, competent witnesses, who sign with appearer and me, officer, after due reading of the whole.

WITNESSES

(ADDRESS)

(ADDRESS)

NOTARY SEAL:

(SIGNATURE OF NOTARY PUBLIC)

B. The form to be used for the Uniform Statutory Form Power of Attorney for Military Personnel shall be available free of charge from the Administrative Services Division of the Office of the Secretary of State upon request. This rule is to become effective December 20, 1991.

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:3865.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, LR 17:1227 (December 1991).

Title 19
CORPORATIONS AND BUSINESS
Part VII. Economic Development Corporation
Subpart 1. Small Business Loan Program

Chapter 1. Loan Policies

§101. Purpose

A. The Louisiana Economic Development Corporation (LEDC) wishes to stimulate the flow of private capital, long-term loans, and other financial assistance for the sound financing of the development, expansion, and retention of small business concerns in Louisiana, as a means of providing high levels of employment, income growth, and expanded economic opportunities, especially to disadvantaged persons and within distressed and rural areas.

B. The corporation will consider sound loans so long as resources permit. The board of the corporation recognizes that guaranteeing, participating, or lending money carries certain risks and is willing to undertake reasonable exposure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:445 (June 1989), amended LR 23:40 (January 1997).

§103. Definitions

*Disabled Person's Business Enterprise*Ca small business concern which is at least 51 percent owned and controlled by a disabled person as defined by the federal Americans With Disabilities Act of 1990.

*Economically Disadvantaged Business*Ca Louisiana business certified as economically disadvantaged by the Department of Economic Development's Division of Economically Disadvantaged Business Development.

*Small Business Concern*Cis defined by SBA for purposes of size eligibility as set forth by 13 CFR 121.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:456 (June 1989), amended LR 23:40 (January 1997).

§105. Application Process

A. Any applicant(s) applying for either a loan guaranty or a loan participation will be required first to contact a financial lending institution that is willing to entertain such a loan with the prospect of a guaranty or a participation.

B. Information submitted to LEDC with the application representing the applicant's business plan, financial position, financial projections, personal financial statements, and background checks will be kept confidential to the extent allowed under the Public Records Law, R.S. 44:1, et seq.

Confidential information in the files of LEDC and its accounts acquired in the course of duty will be used solely by and for LEDC.

C. Submission and Review Policy

1. A completed Louisiana Economic Development Corporation application form to LEDC.

2. Economically disadvantaged businesses applying for assistance under that provision will have to submit certification from the Division of Economically Disadvantaged Business Development of the Department of Economic Development along with the request for financial assistance.

3. Businesses applying for consideration under the disabled person's provision shall submit adequate information to support the disabled status.

4. The lending institution will submit to LEDC its complete analysis, proposed structure, and commitment letter. LEDC staff may do analysis, independent of the lending institution's analysis.

5. The lending institution will submit to LEDC the same pertinent data that it did to the lending institution's loan committee, whatever pertinent data the lending institution can legally supply.

6. LEDC staff will review the application and analysis, then make recommendations. The staff will work with the lending institution on terms of the loan and LEDC loan stipulations.

7. The LEDC's Board Screening Committee will review only the completed applications submitted by staff and will make recommendations to the board.

8. The applicant(s), or their designated representative, and the loan officer, or a representative of the lending institution, are encouraged to attend the Screening Committee meeting.

9. LEDC's Board of Directors has the final approval authority for applications.

10. The applicant will be notified within five working days by mail of the outcome of the application.

11. A LEDC commitment letter will be mailed to the bank within five working days of approval by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:446 (June 1989), amended LR 23:40 (January 1997).

§107. Eligibility

A. Small business concerns domiciled in Louisiana whose owner(s) or principal stockholder(s) shall be a resident of Louisiana.

B. Certified economically disadvantaged businesses.

C. Disabled person's business enterprises domiciled in Louisiana whose owner(s) or principal stockholder(s) shall be a resident of Louisiana.

D. Funding requests for all but the following may be considered:

1. restaurants, except for regional or national franchises;
2. bars;
3. any project established for the principal purpose of dispensing alcoholic beverages;
4. any establishment which has gaming or gambling as its principal business;
5. any establishment which has consumer or commercial financing as its business;
6. funding for the acquisition, renovation, or alteration of a building or property for the principal purpose of real estate speculation;
7. funding for the principal purpose of refinancing existing debt;
8. funding for the purpose of buying out any stockholder or equity holder by another stockholder or equity holder in a business;
9. funding for the purpose of establishing a park, theme park, amusement park, or camping facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:447 (June 1989), amended LR 23:41 (January 1997).

§109. General Loan Provisions

A. The Louisiana Economic Development Corporation will be guided by the following general principles in making loans:

1. The corporation shall not knowingly approve any loan guarantee, loan participation, or loan if the applicant has presently pending or outstanding any claim or liability relating to failure or inability to pay promissory notes or other evidence of indebtedness, including state or federal taxes, or bankruptcy proceeding; nor shall the corporation approve any loan or guarantee if the applicant has presently pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit.

2. The terms or conditions imposed and made part of any loan or loan guaranty authorized by vote of the corporation board shall not be amended or altered by any member of the board or employee of the Department of Economic Development except by subsequent vote of approval by the board at the next meeting of the board in open session with full explanation for such action.

3. The corporation shall not subordinate its position.

B. Interest Rates

1. On all loan guarantees, the interest rate is to be negotiated between the borrower and the bank but may not exceed 2.5 percent above New York prime, as published in the *Wall Street Journal*, at either a fixed or variable rate.

2. On all participation loans, the rate shall be determined by utilizing the rate for a U.S. Government Treasury security for the time period that coincides with the term of the participation and adding 1 percent.

3. The bank may apply for a linked deposit under the Small Business Linked Deposit Program on the term portion of either a guaranteed loan or a participated loan.

C. Collateral

1. Collateral-to-loan ratio will be no less than one-to-one.

2. Collateral position may be negotiated, but will be no less than a sole second position.

3. Collateral Value Determination

a. The appraiser must be certified by recognized organization in area of collateral;

b. the appraisal cannot be over 90 days old.

4. Acceptable collateral may include, but not be limited to, the following:

a. fixed assets, business real estate, buildings, fixtures;

b. equipment, machinery, inventory;

c. personal guarantees are open for negotiation; if used, there must be signed and dated personal financial statements;

d. accounts receivable with supporting aging schedule. Not to exceed 90 percent of receivable value (used with guarantee only).

5. Unacceptable collateral may include, but not be limited to the following:

a. stock in applicant company and/or related companies;

b. personal items;

c. intangibles.

D. Equity

1. Will be no less than 20 percent of the loan amount for a start-up operation or acquisition and no less than 15 percent for an expansion.

2. Equity is defined to be:

- a. cash;
- b. paid-in capital;
- c. paid-in surplus and retained earnings;
- d. partnership capital and retained earnings.

3. No research, development expense, nor intangibles of any kind will be considered equity.

E. Amount

1. For small businesses, the corporation's guarantee shall be:

- a. no greater than 75 percent of a loan up to \$650,000; or
- b. no greater than 70 percent of a loan up to \$1,100,000; or
- c. no greater than 65 percent of a loan up to \$2,300,000;
- d. if the loan request exceeds \$2,300,000 the guaranty shall not exceed \$1,500,000.

2. For certified economically disadvantaged businesses, or disabled person's business enterprises, the corporation's guarantee shall be:

- a. no greater than 90 percent of a loan up to \$560,000; or
- b. no greater than 85 percent of a loan up to \$875,000; or
- c. no greater than 75 percent of a loan up to \$2,000,000;
- d. if the loan request exceeds \$2,000,000, the guaranty shall not exceed \$1,500,000.

3. For small businesses, the corporation's participation shall be no greater than 40 percent, but in no case shall it exceed \$1,500,000.

4. For certified economically disadvantaged businesses, or disabled person's business enterprises, the corporation's participation shall be no greater than 50 percent, but in no case shall it exceed \$1,000,000.

F. Terms. Terms may be negotiated with the bank, but in no case shall the terms exceed 20 years.

G. Fees

1. LEDC will charge a minimum guaranty fee of 0.5 percent of the guaranty amount up to a maximum amount of 2 percent of the guaranty amount.

2. LEDC will charge a \$100 application fee.

H. Use of Funds

1. Purchase of fixed assets, including buildings that will be occupied by the applicant to the extent of at least 51 percent.

2. Purchase of equipment, machinery, or inventory.

3. Line of credit for accounts receivable or inventory.

4. Debt restructure may be considered by LEDC but will not be considered when the debt:

- a. exceeds 25 percent of total loan; and/or
- b. pays off a creditor or creditors who are inadequately secured; and/or
- c. provides funds to pay off debt to principals of the business; and/or
- d. provides funds to pay off family members.

5. Funds may not be used to buy out stockholders, or equity holders of any kind, by any other stockholder or equity holder.

6. Funds may not be used to purchase any speculative investment or real estate development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:448 (June 1989), amended LR 23:42 (January 1997).

§111. General Agreement Provisions

A. Guarantee Agreement

1. The bank is responsible for proper administration and monitoring of loan and proper liquidation of collateral in case of default.

2. The loan shall not be sold, assigned, participated out, or otherwise transferred without prior written consent of the LEDC Board.

3. If liquidation through foreclosure occurs, the bank will sell collateral and handle the legal proceedings.

4. There will be a reduction of the guarantee:

- a. in proportion to the principal reduction of the amortized portion of the loan;
- b. if no principal reduction has occurred in any annual period of the loan, a reduction in the guarantee amount will be made proportional to the remaining guarantee life.

5. The guarantee will cover the unpaid principal amount owed only.

6. Delinquency will be defined according to the bank's normal lending policy and all remedies will be outlined in the guarantee agreement. Notification of delinquency will be made to the corporation in writing and verbally in a time satisfactory to the bank and the corporation as stated in the guarantee agreement.

B. Participation Agreement

1. The bank is responsible for administration and monitoring of the loan.

2. The lead bank will hold no less participation in the loan than that equal to LEDC's, but not to exceed its legal lending limit.

3. The lead bank may sell other participation with LEDC's consent.

4. Should liquidation through foreclosure occur, the bank will sell the collateral and handle the legal proceedings.

5. The bank is able to set its rate according to risk, and may blend its rate with the LEDC rate to yield a lower overall rate to a project.

6. Delinquency will be defined according to the bank's normal lending policy, and all remedies will be outlined. Notification of delinquency will be made to the corporation in writing and verbally in a time satisfactory to the bank and the corporation.

C. Borrower Agreement

1. At the discretion of LEDC, the borrower will agree to strengthen management skills by participation in a form of continuing education acceptable to LEDC.

2. The borrower shall provide initial proof as well as an annual report of job creation, including the number of jobs, job titles, and salaries.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:448 (June 1989), amended LR 23:42 (January 1997).

§113. Confidentiality

A. Confidential information in the files of the corporation and its accounts, acquired in the course of duty, is to be used solely for the corporation. The corporation is not obliged to give credit rating or confidential information regarding applicant. Also, see Attorney General Opinion Number 82-860.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:449 (June 1989), amended LR 23:43 (January 1997).

§115. Conflict of Interest

A. No member of the corporation, employee thereof, or employee of the Department of Economic Development, members of their immediate families shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with the corporation for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such corporation. If any contract or agreement shall be made in violation of the provisions of this Section, the same shall be null and void, and no action shall be maintained thereon against the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:449 (June 1989), amended LR 23:43 (January 1997).

Title 19
CORPORATIONS AND BUSINESS
Part VII. Economic Development Corporation
Subpart 2. Louisiana Venture Capital Program

**Chapter 21. Louisiana Venture
Capital Co-Investment Program**

§2101. Eligibility

A. Any venture capital fund with five years experience in the management of investments made with the capital of other investors and having at least \$7,500,000 under management is eligible to apply for certification under this program.

AUTHORITY NOTE: Promulgated In accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:460 (June 1989).

§2103. Application for Certification

A. The application for certification shall contain, but not be limited to, the following:

1. a cover letter that states that application to the program for certification is being made and indicating reason for application for certification;

2. résumés of the principal manager(s);

3. list of all funds managed by the partner(s);

4. amount of fund(s);

5. project preferences including:

a. role in financing;

b. type of financing;

c. minimum investment;

d. preferred investment;

e. preferred investment (LBO);

6. industry preferences;

7. five-year statement showing investments made and results of those investments;

8. experience with co-investment with any other governmental agency;

9. previous/current experience with projects within Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:461 (June 1989).

§2105. Procedure for Certification Review

A. The application will be submitted to the executive director of the corporation no later than two weeks prior to the regular monthly meeting of the screening committee of the board. He shall review and analyze the information. If the application is complete, he shall submit it and his analysis to the next meeting of the screening committee of the corporation board, which shall review the application and make a recommendation to the next meeting of the full board for certification or denial. Upon certification, a certification number shall be assigned the applicant by the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:461 (June 1989).

§2107. Co-investment Criteria

A. Certified venture capital funds may apply to the corporation for a co-investment by the corporation in a round of financing in a specific project. The project must be for a Louisiana-based enterprise maintaining headquarters and production facilities in Louisiana. The corporation shall not co-invest more than 25 percent of the total venture capital investment in the proposed round of financing of the project. The corporation investment shall not exceed \$500,000 in the proposed round of financing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:461 (June 1989).

§2109. Application Procedures for Co-Investment

A. The summary application must contain but not be limited to:

1. applicant information:

a. venture capital fund name;

b. address;

c. LEDEC certification number;

d. telephone number;

2. project firm information:

a. name of business;

b. address (postal and physical);

c. phone number;

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- d. year established;
- e. state chartered in;
- f. legal structure of business;
- g. IRS tax number;
- h. product or service;
- i. headquarters location;
- j. location of all production and research and development facilities;
- k. list any pending litigation;
- l. list any bankruptcy or insolvency filings;
- 3. owner/manager information:
 - a. name;
 - b. address;
 - c. title;
 - d. social security number;
 - e. percent of ownership;
 - f. annual compensation;
 - g. list any pending litigation;
 - h. list any bankruptcy or insolvency filings;
- 4. use of funds:
 - a. purpose;
 - b. amount;
- 5. securities given in exchange for investment:
 - a. list types of securities to be issued in this round of financing to all investors with any terms and/or conditions attached thereto;
- 6. equity information:
 - a. list all equity investors with numbers of shares owned, type of shares owned, dollar value of investment and date of investment;
 - b. total shares authorized by class;
 - c. total shares outstanding by class.
- B. A business plan that contains but is not limited to:
 - 1. business goals and earnings projections and potential return to investors;
 - 2. market analysis:
 - a. description of total market;
 - b. industry trends;
 - c. target market;
 - d. competition;
 - 3. products or services:
 - a. description of product line;
 - b. proprietary position: patents, copyrights and legal and technical considerations and ownership of same;
 - c. comparison to competitors' products;
 - 4. manufacturing process (if applicable):
 - a. materials;
 - b. sources of supply;
 - c. production methods;
 - 5. marketing strategy:
 - a. overall strategy;
 - b. pricing policy;
 - c. sales terms;
 - d. method of selling, distributing and servicing products;
 - 6. management plan:
 - a. form of business organization;
 - b. board of directors composition;
 - c. officers: organization chart and responsibilities;
 - d. résumés of key personnel;
 - e. staffing plan/number of employees;
 - f. facilities plan/planned capital improvements;
 - g. operating plan/schedule of upcoming work for next one to two years;
 - 7. financial data (for existing firms):
 - a. financial history (five years to present);*
 - b. three-year financial projections (first year by quarters; remaining years annually):
 - i. profit and loss statements;
 - ii. balance sheets;
 - iii. cash flow chart;
 - iv. capital expenditure estimates;
 - c. explanation of projections;
 - d. key business ratios;
 - e. explanation of use and effect of new funds;
 - f. potential return to investors compared to competitors and industry in general;*
 - 8. financial data for startup firms:
 - a. three-year financial projections (first year by quarters; remaining years annually):
 - i. profit and loss statements;
 - ii. balance sheets;
 - iii. cash flow chart;
 - iv. capital expenditure estimates;

- b. explanation of projections;
 - c. key business ratios;
 - d. explanation of use and effect of new funds;
 - e. potential return to investors compared to competitors and industry in general;*
9. schedule of debt:
- a. to whom;
 - b. date opened;
 - c. original balance;
 - d. present balance;
 - e. payment schedule;
 - f. date of maturity;
 - g. rate;
 - h. collateral;
 - i. terms of convertibility;
 - j. list all liens against the project firm and related firms;
10. list of trade creditors/suppliers:
- a. creditor name;
 - b. address;
 - c. date opened;
 - d. high credit;
 - e. balance;
 - f. terms;
11. collateral offered:
- a. type and description;
 - b. present market value:
 - i. appraisals no more than 90 days old at time of application;
 - c. present balance owed;
 - d. total value of collateral;
 - e. source of repayment:
 - i. primary source;
 - ii. secondary source;
 - f. federal and state tax status:
 - i. date of current tax status;
 - ii. date of last audit;
 - iii. deficiencies assessed/proposed.

*All financial statements must meet Generally Accepted Accounting Practices (GAAP).

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:461 (June 1989).

§2111. Procedure for Application Review

A. The application will be submitted to the executive director of the corporation no later than two weeks prior to the regular monthly meeting of the screening committee of the board. He shall review and analyze the information. If the application is complete, he shall submit it and his analysis to the next meeting of the screening committee of the corporation board, which shall review the application and make a recommendation to the next meeting of the full board for approval or denial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:462 (June 1989).

§2113. General Policy

A. The corporation shall not approve any co-investment if the project firm has presently pending, at the federal, state or local level, any proceeding concerning denial or revocation of any necessary license or permit.

B. The corporation will invest in the project on the same terms and conditions as the certified venture capital fund.

C. The requirement of personal guarantee shall be negotiated by the board on a project-by-project basis.

D. Nothing contained herein shall limit the ability of the board or committee thereof to make a reasonable decision based on information submitted to it.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:462 (June 1989).

§2115. Conditions for Disbursements of Funds

A. The secretary-treasurer and one of the following: president of the corporation, chairman, or executive director shall execute all necessary legal instruments at the closing after certification by counsel that all legal requirements have been met.

B. In the case that the co-investment is to be disbursed in a phased funding, the monies provided by the corporation shall be placed in an escrow account to be disbursed at the joint written request of both the venture capital fund co-investor and the project firm at the same rate of disbursement as that of the co-investor venture capital firm. The secretary-treasurer shall have the authority to release the funds from escrow.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:462 (June 1989).

§2117. Compliance Requirements of Project Firms

A. Each year, on the anniversary of the initial disbursement of funds, each recipient of funds shall provide the following:

1. list of all stockholders with the number of shares held by each at any time during the previous year;
2. monthly statement of financial condition including, but not limited to, a balance sheet, profit and loss statement, changes in financial condition, capital reconciliation;
3. current reconciliation of net worth;
4. one-year projected cash flow statement. Statement must be prepared on a month-to-month basis, accompanied with footnotes;
5. current personal financial statement of all principals;
6. annual (within 90 days of the end of the fiscal year) audited financial statement prepared by a certified public accountant;
7. current insurance policies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:462 (June 1989).

§2119. Repayment Terms

A. The board of the corporation shall have the sole responsibility to set repayment terms on a project-by-project basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:463 (June 1989).

§2121. Confidentiality and Conflict of Interest

A. Confidentiality. Confidential information in the files of the program and its accounts, acquired in the course of duty, is to be used solely for the program. The program is not obliged to give credit rating or confidential information regarding applicant. Also see Attorney General Opinion Number 82.860.

B. Conflict of Interest. No member of the corporation, employee thereof, or employee of the Department of Economic Development or members of their immediate families shall either directly or indirectly be a party to, or be in any manner interested in any contract or agreement with the corporation for any matter, cause, or thing whatsoever. If any contract or agreement shall be made in violation of the provisions of this Section the same shall be null and void and no action shall be maintained thereon against the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:463 (June 1989).

§2123. Ownership of Stock and Incidents Thereto

A. Stock taken in co-investment shall be held by the corporation. The board through its duly authorized designee shall vote the stock.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:463 (June 1989).

Chapter 23. Louisiana Venture Capital Match Program

§2301. Eligibility

A. Eligible applicants are:

1. Venture Capital Funds with a minimum of \$5,000,000 of privately raised capital for risk investment under management with:

a. proven, experienced management recognized in the venture capital community. The management should have significant management experience in risk investments of the types and volumes contemplated by the applicant venture capital funds;

b. a Louisiana-based production office. The production office shall have permanent employees employed by the fund capable of evaluating potential investment opportunities;

c. funds without headquarters located in Louisiana must have a minimum of one-year operating history.

2. For the purposes of this Chapter, *Risk Investment* means an investment which may provide equity through the purchase of common stock, preferred stock, partnership rights or any other equity instrument. Additionally it may mean debt positions which may act as equity or have equity features such as subordinated debt, debentures or other such instruments used in conjunction with features intended to yield significant capital appreciation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:463 (June 1989), amended LR 23:558 (May 1997).

§2303. Valuation of Investment Fund

A. The amount of privately raised funds under management shall mean the value of any monies invested or otherwise used as risk capital in businesses plus the unexpended monies available for investment or used as risk capital. The value of an equity investment and/or risk capital investment shall be the amount of dollars actually invested. For the purpose of calculating private capital, only cash and commitments which are available for risk investments at the time of LEDC's match, may be counted in the match amount.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:463 (June 1989), amended LR 23:559 (May 1997).

§2305. Application Procedure

A. The application shall contain, but not be limited to, an offering memorandum which includes, but is not limited to, the following:

1. name of fund, address (mailing and physical);
2. specify the amount of LEDC investment/commitment requested;
3. specify the minimum and maximum amounts of non-LEDC capital to be raised if LEDC makes the requested investment/commitment;
4. specify applicant's projected timetable, with milestones for completion of the fund raising;
5. specify whether applicant anticipates taking in all of the committed capital investment at closing, or whether applicant plans a phase in. If a phase-in is planned, specify the proposed schedule. It is permissible to have different scenarios based on the actual amount of capital raised;
6. *market* Identify the proposed market of the applicant:
 - a. describe and discuss the types of businesses that the fund will finance. Discuss the extent to which the fund intends to specialize in certain industries, or if special circumstances will be addressed;
 - b. describe the size range of businesses that it is contemplated the fund will finance, with a general indication of where most of the focus is expected;
 - c. discuss the life cycle stage or stages of the companies which the fund will likely finance, with an indication of where most of the focus is contemplated, e.g., start-up, expansion;
 - d. discuss the geographic area in which the fund plans to focus. Specify the city or parish in which the fund's principal office will be located, and discuss intentions, if any, to establish any additional offices;
 - e. describe the types of financing instruments that are intended to be utilized for investments, e.g., debentures, notes, preferred stock, royalties, etc.;

7. *management assistance* Discuss the plans of the fund to provide management and/or technical assistance to companies for which the fund provides financing. Discuss the fund's plans for monitoring its financing, and enforcing provisions of loan or investment agreements. Discuss how the fund plans to handle problem loans and investments;

8. *idle funds* Describe plans for the management of the idle funds of the fund;

9. *realization of returns by investors* Discuss long-term plans and strategies for providing a tangible return to the investors in the fund;

10. *tax and accounting issues* Discuss relevant tax and accounting issues for the fund;

11. *management structure* Describe the proposed management structure for the fund;

12. describe the proposed responsibilities of each of the members of the management team. If any of these people will not be full time, describe their other activities;

13. describe the responsibilities of any management position for which a person has not been identified;

14. specify any other key people including any advisors, consultants, attorneys and accountants, and submit resumes and/or descriptions of firms. LEDC reserves the right to perform general and criminal background checks on these key people.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:463 (June 1989), amended LR 23:559 (May 1997).

§2307. Amount of Investment

A. The corporation may invest up to \$5,000,000. The corporation may use its discretion to set the ratio of corporation investment to private investment. However, the ratio shall not exceed \$1 of corporation monies to \$2 of privately-raised dollars.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:463 (June 1989), amended LR 23:559 (May 1997).

§2309. Investment Criteria

A. The criteria for investment may include but not be limited to the following.

1. The applicant will be required to make investments that will at least create jobs in, create wealth in, and shall have a substantial economic impact to the economy of Louisiana.

2. The investment made by LEDC shall be made on no less than the same terms and conditions, and with the same expected return on investment, as other private investors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:463 (June 1989), amended LR 23:559 (May 1997).

§2311. Reporting Requirements

A. Funds receiving investments under this program shall submit quarterly and annual financial and narrative reports on the use of monies and all investments made by the fund during the reporting period. The narrative report shall

include the number of applications received in addition to other activities. The narrative report shall include a listing of all investors in each business and all subsequent financings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:463 (June 1989), amended LR 23:559 (May 1997).

§2313. Inactivity

A. If no activity has occurred in the fund for a period of one year or reporting requirements are not met, the Venture Fund shall be reviewed by the board of the corporation. After review the board may choose to revoke its investment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:463 (June 1989), amended LR 23:560 (May 1997).

§2315. Reporting Requirements

A. Funds receiving investments under this program shall submit quarterly and annual financial and narrative reports on the use of Louisiana Fund monies and all other investments made by the fund during the reporting period. The narrative report shall include the number of applications received in addition to other activities. The narrative report shall include a listing of all investors in each business and all subsequent financings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:464 (June 1989).

§2317. Inactivity

A. If no activity has occurred in the Louisiana Fund for a period of two years, or reporting requirements are not met, the Venture Fund shall be reviewed by the board of the corporation. After review the board may choose to revoke its investment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:464 (June 1989).

Chapter 25. Louisiana Minority Venture Capital Match Program

§2501. Eligibility

A. Any Louisiana-owned and headquartered Venture Capital Fund with a minimum of \$250,000 of privately-raised capital for equity investment under management may apply.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:464 (June 1989).

§2503. Valuation of Investment Fund

A. The amount of funds under management shall mean the value of any monies invested in a business plus the unexpended monies available for investment. The value of an equity investment shall be the amount of dollars actually invested.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:464 (June 1989).

§2505. Fund Management

A. Management shall be comprised of individuals with substantial experience in business operations and financing, including business startup or expansion financing. The development of these investments may have been done for the individual's own account or on behalf of others.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:464 (June 1989).

§2507. Application Procedure

A. The application shall contain but not be limited to:

1. résumés of principals;
2. current balance sheet and income statement of applicant fund and individual investments;
3. balance sheet and income statement of all funds and investments managed by applicant principals during the last three years and/or other investments managed by the principals in the last three years;
4. list of fund investors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:464 (June 1989).

§2509. Amount of Investment

A. The corporation may invest up to \$2,500,000. The corporation may use its discretion to set the ratio of corporation investment to private investment; however, the ratio shall not exceed \$1 of corporation monies to \$2 of privately-raised dollars.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:464 (June 1989).

§2511. Terms of Investments

A. Corporation investments shall be made on the same terms and conditions as those of other investors in the fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:465 (June 1989).

§2513. Creation of a Louisiana Fund

A. The applicant shall, on receipt of funds from the corporation, immediately set up an account in a financial institution domiciled in Louisiana to be called the Louisiana Fund and deposit the proceeds of the state's investment into that fund. The proceeds of this fund shall be used solely for investments in minority owned enterprises maintaining headquarters and production facilities in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:465 (June 1989).

§2515. Reporting Requirements

A. Funds receiving investments under this program shall submit quarterly and annual financial and narrative reports on the use of Louisiana Fund monies and all other

investments made by the fund during the reporting period. The narrative report shall include the number of applications received in addition to other activities and the number of applications received from minority owned firms. Reports must include a listing of all investors in each business and all subsequent financing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:465 (June 1989).

§2517. Inactivity

A. If no activity has occurred in the Louisiana Fund for a period of two years, the Venture Fund shall be reviewed by the board of the corporation. After review the board may choose to revoke its investment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:465 (June 1989).

Title 19
CORPORATIONS AND BUSINESS
Part VII. Economic Development Corporation
Subpart 4. Small Business Innovative Research Program

**Chapter 51. Matching Grant
Program**

§5101. Purpose

A. To provide for support of innovative private sector research and development activities that are intended to generate commercial products, processes, or services through the provision of grants matching those Phase 1 grants or contracts awarded by the United States Government through its Small Business Innovative Research Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2322.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:733 (September 1989).

§5103. Eligibility

A. Any Louisiana firm which has received a Federal SBIR Phase 1 research award.

B. Any out-of-state firm which agrees to relocate headquarters and research and development operations to Louisiana and has received a Federal SBIR Phase 1 research award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2322.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:733 (September 1989).

§5105. Application Process

A. The application shall include but not be limited to:

1. a copy of the Phase 1 proposal to the federal program;
2. a statement that the applicant has submitted the proposal to the federal program and that they are submitting a notification of intent to file with the state program;
3. a use of funds schedule for the requested state grant;
4. a copy of the grant/contract award from the federal program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2322.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:733 (September 1989).

§5107. Submission and Review Procedure

A. Applications will be received only after the applicant has submitted an application to the Federal SBIR program. Applications may be submitted through the course of the Phase 1 research period. No applications for match will be received after the expiration date of the federal grant or contract.

B. All applications must be submitted no later than three weeks prior to the scheduled screening committee meeting for consideration at the next scheduled board meeting of the corporation following the screening committee meeting.

C. LEDEC staff shall review the application and make recommendations regarding the use and disbursement of the matching grant funds to the screening committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2322.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:733 (September 1989).

§5109. Term

A. Grant funds must be expended by the firm no later than 30 days after the decision of the federal agency regarding the Phase 2 application or 60 days after the acceptance of the final Phase 1 report by the federal agency if no Phase 2 application is made.

B. Exceptions to this may be made by the board on a case-by-case basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2322.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:733 (September 1989).

§5111. Disbursement and Use of Funds

A. The project proposed for state funding must represent a continuation of and be compatible with the firm's Phase 1 research; and/or

B. funds may be used to complete Phase 1 research;

C. the funds will be disbursed at the time and in the manner determined by the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2322.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:733 (September 1989).

§5113. Grant Document

A. The secretary-treasurer of the corporation and one of the following shall execute all necessary legal instruments to effect the grant award:

1. president of the corporation;
2. chairman of the board; or
3. executive director.

B. The grant documents must satisfy all legal requirements as evidenced by the written approval of the corporation's attorney.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2322.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:733 (September 1989).

§5115. Residency Requirement

A. If a firm that has received Louisiana Small Business Innovative Research-matching grant funds moves its headquarters or research and development operations out of Louisiana within five years of receiving the grant, said firm will be immediately obligated to repay the state the full amount of the state-matching grant received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2322.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:734 (September 1989).

§5117. Recision

A. Recision or reduction of a firm's Federal SBIR grant funds will result in the immediate recision or reduction of the state matching grant to the firm. Any state matching award funds which have been disbursed to the firm and which are determined by the corporation to relate to the recision or reduction, are immediately owed to the corporation and shall be returned to the corporation within seven days of the notice of the recision or reduction of the firm's Federal SBIR award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2322.

HISTORICAL NOTE Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:734 (September 1989).

§5119. Reporting Requirements

A. The applicant shall file a financial and narrative report monthly until state funds have been expended.

B. The applicant shall submit a copy of the final report submitted to federal grant agency along with a final financial report covering the entire state grant period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2322.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:734 (September 1989).

§5121. Confidentiality

A. Confidential information in the files of the corporation, acquired in the course of duty, is to be used solely for the corporation. The corporation is not obliged to give out a credit rating or confidential information regarding any applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2322.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:734 (September 1989).

§5123. Conflict of Interest

A. No member of the corporation, employee thereof, or employee of the Department of Economic Development, or members of their immediate families shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with the corporation for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against the corporation. If any contract or agreement shall be made in violation of the provisions of this Section, the same shall be null and void, and no action shall be maintained thereon against the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2322.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:734 (September 1989).

Title 19
CORPORATIONS AND BUSINESS
Part VII. Economic Development Corporation
Subpart 5. Contract Loans

Chapter 61. Contract Loan Program

§6101. Purpose

A. The Louisiana Economic Development Corporation (LEDC) wishes to stimulate the flow of private capital, long-term loans, and other financial assistance for the sound financing of the development, expansion, and retention of small business concerns in Louisiana as a means of providing high levels of employment, income growth, and expanded economic opportunities, especially to disadvantaged persons and within distressed and rural areas.

B. This program will be a pilot program for a period of one year upon which the board of directors of the LEDC will consider extending the program. The corporation will consider sound loans so long as resources permit. The board of the corporation recognizes that guaranteeing, participating, or lending money carries certain risks and is willing to undertake reasonable exposure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 21:672 (July 1995).

§6103. Definitions

*Contract*Ca contract for goods and/or services to any federal, state, or local government entity.

*Disabled Person's Business Enterprise*Ca small business concern which is at least 51 percent owned and controlled by a disabled person as defined by the federal Americans with Disabilities Act of 1990.

*Minority- or Woman-owned Business Enterprise*Cmust be owned or controlled by a socially or economically disadvantaged person, which is defined by the SBA as a person(s), regardless of sex or marital status, who is a member of groups whose disadvantage may arise from cultural, racial, chronic economic circumstances, or background as stated in R.S. 51:2347, et seq., and must be certified as a minority business enterprise or woman's business enterprise as defined in R.S. 51:2347(B)(1-6).

*Small Business Concern*Cas defined by SBA for purposes of size eligibility as set forth by 13 CFR 121.

AUTHORITY NOTE: Promulgated in accordance with R. S. 51:2312(A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 21:672 (July 1995).

§6105. Application Process

A. Applicant is required to first contact a financial lending institution that is willing to entertain such a loan with the prospect of additional credit support provided by a LEDC guaranty/participation and complete the application process.

B. Information submitted to LEDC with the application representing the applicant's business plan, financial position, financial projections, personal financial statements, and background checks will be kept confidential to the extent allowed under the Public Records Law, R.S. 44:1, et seq. Confidential information in the files of LEDC and its accounts, acquired in the course of duty, will be used solely by and for LEDC.

C. Submission and Review Policy

1. A completed Louisiana Economic Development Corporation application form, along with the information identified in Attachment A, must be submitted with a \$100 application fee. Applications will be processed with decisions confirmed promptly.

2. Minority- and women-owned businesses applying for assistance under that provision will have to submit certification from the Minority and Women's Business Enterprise Office of the Department of Economic Development, along with the request for financial assistance.

3. Businesses applying for consideration under the "disabled persons" provision shall submit adequate information to support the disabled status.

4. LEDC staff will review the applications for completeness and submit only complete packages for analysis. Any applications not receiving approval in the initial analysis process shall be individually reviewed, and exceptions to underwriting criteria noted. The LEDC staff will report to the screening committee monthly those applications approved, and those not recommended for approval, with reasons.

5. Loans guaranteed/participated in by LEDC must qualify under LEDC pre-approved underwriting criteria using standardized LEDC documentation. The originating bank is responsible for all loan closing documentation. Closing will occur only after a site visit by a LEDC staff member or designated representative.

6. Only those applicants and/or their designated representatives asked to be present by the LEDC staff need to be present for the screening committee.

7. The board of directors will review the results of all applications processed and screened. Loans recommended for approval by the LEDC staff as exceptions to standard underwriting criteria will be presented to the screening committee of the board for approval. Loans for \$100,000 or less approved under standard underwriting procedures requiring a LEDC guarantee/participation shall be approved jointly by the LEDC executive director and deputy director. In the absence of one of those persons, the president of LEDC, or the secretary/treasurer, could additionally approve the loan. All completed applications recommended by staff on loans in excess of \$100,000 will be approved by the screening committee and the board.

8. The applicant will be notified promptly from date accepted for processing by mail of the outcome of the application.

9. A LEDC commitment letter and standard guaranty or participation agreement will be mailed to the bank promptly after approval by the LEDC staff applying standardized evaluation processes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51: 2312(A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 21:672 (July 1995).

§6107. Eligibility

A. Small business concerns as defined by SBA for purposes of size eligibility as set forth by 13 CFR 121.

B. Small businesses whose owner(s) or principal stockholder(s) shall be a resident of Louisiana, and the business is domiciled in Louisiana with preference given to certified minority businesses, women-owned businesses, or businesses owned by disabled persons.

C. An assignable contract for goods or services with a federal, state, or local entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51: 2312(A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 21:673 (July 1995).

§6109. General Loan Provisions

A. Only one contract loan will be allowed for any one borrower at any one time. A borrower may apply for additional contract loans only after the full repayment of any previous contract loan is complete.

B. The Louisiana Economic Development Corporation will be guided by the following general principles in making loans.

1. Funding requests will only be considered for supporting contracts for goods and services provided to federal, state, or local entities.

2. Proceeds of the loan shall not be used for any of the following purposes:

a. repayment of debt to or the cashing out of any stockholder or principal of the business;

b. repayment of any personal debt;

c. funding for the principal purpose of refinancing existing debt in excess of 10 percent of the total requested loan amount.

3. The corporation shall not knowingly approve any loan guaranty/participation if the applicant has presently pending, or outstanding, any claim or liability relating to failure or inability to pay promissory notes or other evidence of indebtedness including state or federal taxes, or bankruptcy proceeding; nor shall the corporation approve any loan guarantee/participation if the applicant has presently pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit.

4. The terms or conditions imposed and made part of any loan guaranty/participation authorized by vote of the corporation board shall not be amended or altered by any member of the board or employee of the Department of Economic Development except by subsequent vote of approval by the board at the next meeting of the board in open session with full explanation for such action.

5. The corporation shall not subordinate its position.

C. Interest Rates. On all loan participations/guarantees the interest rate is to be negotiated between the borrower and the bank but may not exceed four percentage points above New York prime, as published in the *Wall Street Journal*, at either a fixed or variable rate.

D. Collateral

1. Collateral-to-loan ratio will be no less than one-to-one (1:1).

2. Collateral position shall be negotiated but will be no less than a sole second position.

3. Collateral value determination:

a. the appraiser must be certified by recognized organization in area of collateral;

b. the appraisal cannot be over 90 days old;

c. the percentage of value considered shall be consistent with the underwriting criteria established by the LEDC Board from time-to-time.

4. Acceptable collateral may include, but not be limited to the following:

a. fixed assets: real estate, buildings, fixtures;

b. equipment, machinery: used in support of the contract at cost supported by invoice or no more than 75 percent of cost for existing equipment or machinery;

c. inventory: used in support of the contract at cost supported by invoice or no more than 50 percent of cost for existing inventory;

d. personal guarantees are required; however, no value will be assessed towards collateral value. A signed and dated personal financial statement is also required;

e. eighty-five percent of accounts receivable considered collectable with supporting aging schedule;

f. contract with federal, state, or local entity shall be assigned to lender; however, no value will be assessed towards collateral value.

5. Unacceptable collateral may include, but not be limited to the following:

a. stock in applicant company and/or related companies;

b. personal items.

E. Equity

1. Will be no less than 10 percent of the loan amount for a start-up operation, an acquisition, or an expansion.

2. Equity is defined to be:

a. cash;

b. paid in capital;

c. paid in surplus and retained earnings;

d. partnership capital and retained earnings;

e. unfunded portion of inventory and receivables.

3. No research, development expense, nor intangibles or contributed assets, other than cash of any kind, will be considered equity.

F. Amount

1. For small businesses the corporation's participation shall be no greater than 50 percent of a loan, but in no case shall it exceed \$500,000.

2. For certified minority-owned, women-owned, or owned by disabled persons, the corporation's participation shall be no greater than 60 percent of a loan, but in no case shall it exceed \$500,000.

3. For either a small business or a certified minority-owned, woman-owned, or disabled-owned business the corporation's guarantee shall be no greater than 50 percent of the lending institution's portion of the amount of the first draw of the contract. The first draw cannot exceed 50 percent of the total loan amount.

G Terms. The term may be no longer than 180 days past the completion date of the contract but in no case any greater than one and one half years.

H. Use of Funds. To support a contract for goods and services for a federal, state, or local entity. All proceeds of the contract will be assigned and collected by the lending institution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51: 2312(A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 21:673 (July 1995).

§6111. General Agreement Provisions

A. Participation Agreement

1. The lending institution is responsible for administration and monitoring of the loan.

2. The lead lender may not sell any additional participations in the loan.

3. Should liquidation through foreclosure occur, the bank will sell the collateral and handle the legal proceedings.

4. The bank interest rate may not exceed four percentage points above New York prime, as published in the *Wall Street Journal*, at either a fixed or variable rate.

5. Delinquency will be defined according to the bank's normal lending policy and all remedies will be outlined. Notification of delinquency will be made to the corporation in writing and verbally in a time satisfactory to the bank and the corporation.

B. Guaranty Agreement

1. Lending institution is responsible for proper administration and monitoring of loan and proper liquidation of collateral in case of default.

2. If liquidation through foreclosure occurs, the bank sells collateral and handles legal proceedings.

3. The guarantee will commence upon the first draw on the line of credit and will end upon the advance of the second draw on the line of credit.

4. The guarantee will cover the unpaid principal amount owed only.

5. Delinquency will be defined according to the bank's normal lending policy, and all remedies will be outlined in the guarantee agreement. Notification of delinquency will be made to the corporation in writing and verbally in a time satisfactory to the bank and the corporation as stated in the guarantee agreement.

C. Borrower Agreement. At the discretion of LEDC, the borrower will agree to strengthen management skills by participation in a form of continuing education acceptable to LEDC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51: 2312(A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 21:674 (July 1995).

§6113. Confidentiality

A. Confidential information in the files of the corporation and its accounts, acquired in the course of duty, is to be used solely for the corporation. The corporation is not obliged to give credit rating or confidential information regarding applicant. Also see Attorney General Opinion Number 82-860.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341-2347.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 21:674 (July 1995).

§6115. Conflict of Interest

A. No member of the corporation, employee thereof, employee of the Department of Economic Development, nor members of their immediate families, shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with the corporation for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such corporation. If any contract or agreement shall be made in violation of the provisions of this Section, the same shall be null and void, and no action shall be maintained thereon against the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341-2347.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 21:674 (July 1995).

ATTACHMENT A

The application for financial assistance should consist of a completed LEDC application form and a comprehensive business plan/loan proposal which contains, but is not limited to, the following guidelines:

1. A LEDC Contract Loan Application Form;
2. Executive Summary:
 - a. business description:
 - i. name;
 - ii. location and business facility description;
 - iii. product or service;
 - iv. market and competition;
 - v. management expertise;
 - b. business goals, including number of employee jobs to be saved or created as a result of this loan;
 - c. uses of loan proceeds;
 - d. copy of contract: provide name, address, and telephone number of awarding agency;
 - e. projected financial results demonstrating payback capability;

3. Operations;
 - i. board of directors composition;
 - ii. officers: organization chart and responsibilities;
 - iii. list of stockholders with more than 15 percent ownership;
 - iv. résumés of key personnel;
 - v. staffing plan/number of employees;
 - vi. facilities plan/planned capital improvements;
 - vii. operating plan/schedule of upcoming work for next one to two years;
 - viii. list of work backlog, if any;
4. The originating bank may be asked by LEDC to share additional information on which they based a favorable decision;
5. a. For Sole Proprietorships:
 - i. last three years personal, federal and state income tax returns complete with all schedules (as available based upon age of business);
 - ii. interim business income statement for the current year;
 - iii. complete personal financial statement.
- b. For Partnerships or Corporations:
 - i. last three years' business financial statements including balance sheets and income statements;
 - ii. interim business financial statements;
 - iii. last three years' business income tax returns complete with all schedules;
 - iv. most recent personal income tax returns including all schedules with K1s for each owner, general partner, and/or guarantor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341-2347.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 21:674 (July 1995).

Title 19
CORPORATIONS AND BUSINESS
Part VII. Economic Development Corporation
Subpart 6. Louisiana Economic Development Corporation

**Chapter 71. BIDCO Investment and
Co-Investment Program**

§7101. Purpose

A. The purpose of the Business and Industry Development Corporation (BIDCO) Investment Program is to foster the growth of this new financial entity in Louisiana, designed to help meet the financing and management assistance needs of business firms in this state by filling the mezzanine financing gap between conventional bank financing and venture capital financing. A BIDCO is not a depository financial institution and is not intended to compete with traditional financial institutions for business or commercial loans.

B. Louisiana Economic Development Corporation (LEDC) believes that investments in and with BIDCOs are consistent with fulfilling its statutory responsibilities in a manner that provides opportunities for capital formation in support of business while receiving adequate investment return at relatively low to moderate risk. LEDC recognizes that obtaining capital for new investment concepts, such as a BIDCO, can prove difficult. It also recognizes that, to be effective, a BIDCO must attain a level of funding adequate to provide for a continuing series of investments over time which generate sufficient cash flow to provide for overhead expenses appropriate to effectively manage the risks associated with BIDCO investments.

C. To foster the growth of BIDCOs, LEDC is prepared to make matching equity capital investments or co-investments in BIDCOs for purposes of facilitating the orderly growth of capital in the BIDCO, so that they may attain the size and results adequate for sustained performance without further participation by LEDC. The ability of the BIDCO to raise capital from private equity sources during its formative stage will be enhanced by LEDC participation.

D. A major objective of LEDC is to leverage the impact of its resources through the funds that it invests in BIDCOs. In addition to stimulating private capital investments, additional leveraging is anticipated through BIDCO borrowing on its expanded capital base or by its selling the guaranteed portions of SBA guaranteed loans. Ultimately it is the objective of LEDC to sell its stock in a BIDCO at a profit, notwithstanding its willingness to provide discounted buy-out opportunities to the BIDCO or its private investors, leaving behind an ongoing, permanent institution operating without any direct LEDC ownership.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 18:1357 (December 1992).

§7103. Definitions

A. *BIDCO* A Louisiana business and industrial development corporation licensed by the Louisiana Office of Financial Institutions (OFI) with its business consisting of providing nontraditional capital and/or debt funding for qualified Louisiana businesses.

B. *Qualified Louisiana Business* Any enterprise with its primary operations in Louisiana, or with substantially all of its production in Louisiana, and which has no more than 500 employees and has annual business receipts not in excess of \$7,000,000.

C. Definitions of other terms used herein are provided in the legislation which is reflected in Chapter 39-A of Title 51 of the Louisiana Revised Statutes of 1950, comprised of R.S. 51:2386-2398.

D. *Private capital* Paid-in-cash capital from non-LEDC sources, available for investment in assets of the BIDCO. These non-LEDC sources may include other nonstate governmental sources (e.g., municipalities, parishes) provided the nonstate governmental capital funds do not exceed 50 percent of the private capital, and provided the nonstate governmental capital funds are not directly or indirectly derived from state sources. For purposes of calculating the eligibility of a request for matching equity capital, components other than paid-in-cash capital will be considered. Future capital commitments payable over the next five years will be discounted to present value using an annual interest factor of 10 percent. If funding of operating expenses for at least 36 months is committed from sources other than the financial performance of the investment portfolio or paid in capital, the future value of those payments compounded at 10 percent annually will be similarly considered.

E. A *Specialty BIDCO* shall be defined in accordance with the Office of Financial Institution's BIDCO policy.

F. *Seed Investor* Can investor in the start-up stages of the BIDCO, prior to certification by OFI and LEDC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 18:1357 (December 1992), amended LR 23:554 (May 1997).

§7105. LEDC Application Process

A. LEDC will accept applications from BIDCOs for LEDC certification on a continuing basis. To apply to LEDC a BIDCO must be incorporated in Louisiana, certified by the State of Louisiana Office of Financial Institutions, submit the information outlined in §113 with an application fee of \$500. LEDC will favorably certify the BIDCO based upon its assessment of the proposed business plan, adequacy and experience of ownership and management, and its sources of funding. Once LEDC approves the BIDCO, it will contribute to the future funding of the BIDCO as outlined in §111.

B. LEDC will process applications for a matching equity capital investment or when an application is presented for a co-investment as follows:

1. applications will be processed in the order in which they are received;

2. LEDC staff will conduct an initial screening of the application for completeness in accordance with §113;

3. an incomplete application for initial certification will be returned to the submitter. A previously incomplete application may be resubmitted, which will establish a new time and date received for that application;

4. an incomplete application not resubmitted within 30 days will forfeit the application fee;

5. LEDC staff will begin the evaluation process of initial certification, matching equity capital requests and project co-investment requests within applications within 30 days of receipt by entering into a dialogue with the applicant that leads to submission for approval by the board of LEDC.

C. Information submitted with the application either for a match investment or co-investment representing the applicant's business plan, financial position, financial projections, personal financial statements and background checks will be kept confidential to the extent allowed under the Public Records Law, R.S. 44:1, et seq. Confidential information in the files of LEDC and its accounts, acquired in the course of duty, will be used solely by and for LEDC; however, in the event of a BIDCO's licensure surrender, dissolution, bankruptcy, or other indication of insolvency, previously confidential information shall be disclosable under the Public Records Law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 18:1357 (December 1992), amended LR 23:554 (May 1997).

§7107. Eligibility for Submission of an Application

A. In order to be eligible for consideration of initial certification or to receive a matching equity capital investment by LEDC, the applicant must fulfill the following eligibility requirements:

1. it must have obtained a license from OFI or have received preliminary approval from OFI for issuance of a license;

2. it must be a Louisiana corporation;

3. in order to be eligible for a conditional or final approval to receive an investment from LEDC, as described in §109, it must have raised a minimum of \$1,000,000 of private capital, exclusive of LEDC funds, unless the minimum capital requirement is reduced by OFI pursuant to the BIDCO Act. These private capital funds may be either committed or actual cash contributions, as defined in §103. Final approval will be granted only upon proof of actual cash or cash equivalent contributions [pursuant to R.S. 51:2392 (B)(2)(d)(2)].

B. Its management must be experienced in debt and/or capital financing of the types and volume contemplated by the applicant BIDCO.

C. LEDC may consider applications from BIDCOs which have a businesslike mission but with special circumstances or specialized opportunities (herein "Specialty BIDCOs.")

D. Owners and investors cannot be in conflict with the Code of Governmental Ethics, R.S. 42:1112. BIDCOs shall not invest in a company in which a principal or officer of the BIDCO also has an interest in the company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 18:1358 (December 1992).

§7109. Amount of Investment

A. Co-Investment

1. If a nonspecialty BIDCO can show private cash capital contributions or commitments, as defined in §103, of at least \$1,000,000, LEDC may co-invest \$1 for each \$2 for each LEDC approved project submitted to it by the BIDCO. The LEDC investment will participate pro-rata with the BIDCO share of the investment. The LEDC investment will not exceed 33 percent of any project nor will LEDC funding exceed \$1 for each \$2 of other BIDCO capital committed. On each project submitted for review, an application fee of \$250 is required.

2. If a specialty BIDCO can show private cash capital contributions or commitments, as defined in §103, of at least \$250,000, LEDC may co-invest \$1 for each \$1 for each LEDC approved project submitted to it by the BIDCO. The LEDC investment will participate pro-rata with the BIDCO share of the investment. The LEDC investment will not exceed 50 percent of any project nor will LEDC funding exceed \$1 for each \$1 of other BIDCO capital committed. On each project submitted for review, an application fee of \$250 is required.

B. Match Investment

1. If a nonspecialty BIDCO can show private cash capital contributions or commitments, as defined in §103, of \$2,000,000, exclusive of any previous investments by LEDC, the BIDCO may request a matching equity capital contribution from LEDC. Each request should be accompanied by a \$500 application fee. If the BIDCO is considered an acceptable risk, based upon LEDC review of its credentials, performance, and business plan, or some combination thereof, LEDC may make a matching cash contribution on the basis of \$1 for each \$2 of the BIDCO capital not to exceed \$2,500,000, reduced for any previous LEDC capital contributions. LEDC will base its matching equity capital contribution on the amount of non-LEDC capital as calculated in accordance with §103(D). Thereafter it will participate in all future BIDCO investments on a pro-rata basis with all other BIDCO funds. Any BIDCO which has received a LEDC match investment is ineligible to present portfolio projects to LEDC for assistance through any of LEDC's other programs.

2. If a specialty BIDCO can show private cash capital contributions or commitments, as defined in §103, of \$250,000, exclusive of any previous investments by LEDC, the BIDCO may request a matching equity capital contribution from LEDC. Each request should be accompanied by a \$500 application fee. If the BIDCO is considered an acceptable risk, based upon LEDC review of its credentials, performance, and business plan, or some combination thereof, LEDC may make a matching cash contribution on the basis of \$1 for each \$1 of the BIDCO capital not to exceed \$2,500,000, reduced for any previous LEDC capital contributions. LEDC will base its matching equity capital contribution on the amount of non-LEDC capital as calculated in accordance with §103(D). Thereafter it will participate in all future BIDCO investments on a pro-rata basis with all other BIDCO funds. Any BIDCO which has received a LEDC match investment is ineligible to present portfolio projects to LEDC for assistance through any of LEDC's other programs.

(Editor's Note: Existing Subsections E. and F. are renumbered 3. and 4., respectively.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 18:1357 (December 1992), amended LR 23:554 (May 1997).

§7111. Terms of Investment

A. Founders stock and or investment given in exchange for services shall be subordinate to LEDC's investment unless LEDC determines that the pricing of such founders investment and/or stock is commensurate with the services performed or risks taken, in comparison with the pricing of LEDC investment.

B. LEDC will have the right to appropriate representation on and control of the BIDCO's management and governance as negotiated with the BIDCO. This may include, but not be limited to, board seat(s); veto authority or supermajority requirements for key management and financial decisions; board visitation rights.

C.1. LEDC's stock may be repurchased by the BIDCO or, secondarily, by its private capital stockholders at the end of the fifth year or each subsequent annual operating period for a discounted amount of LEDC's then-current book value or market value, whichever is higher, subject to LEDC's concurrence on the valuation methodology and the achievement of BIDCO performance objectives specified at the time of LEDC's investment. The BIDCO or its private-capital investors can experience an appreciation in their investment commensurate with the amount of discount granted by LEDC in the sale of its stock back to the BIDCO or its shareholders. The discount at the end of the five years or annually thereafter, is:

	DISCOUNT	LEDC RECEIVES
End of 5 Years	25%	75%
6th Year	20%	80%
7th Year	15%	85%
8th Year	10%	90%
9th Year and Beyond	5%	95%

2. This scenario provides greater incentives for the BIDCO/shareholders to repurchase LEDC's interest earlier than later, but retains incentive for the buy-out beyond the ninth year. See Exhibit 1 for an example of the buy-out scenarios. This provision is not applicable to nonprofit BIDCO's.

D. LEDC may negotiate additional operating requirements with individual applicant BIDCO's on a case-by-case basis, as needed to safeguard the quality of LEDC's investment or to promote achievement of the objectives of the program or LEDC. Such requirements may include, but not be limited to, a put (sell) option to liquidate LEDC's investment in the BIDCO.

E. All agreements will be executed by duly authorized persons outlining the details of the transaction.

F. LEDC's funding under its commitment will be made on a quarterly basis subject to verification of non-LEDC funds received by the BIDCO.

G. Capital match investments in a nonprofit BIDCO will be in the form of a debenture with terms and rates to be negotiated consistent with the BIDCO's business plan and LEDC's investment objectives and policies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 18:1357 (December 1992), amended LR 23:555 (May 1997).

§7113. Application Requirements

To apply for LEDC financing, A BIDCO shall submit to LEDC evidence of its OFI approval or preliminary approval. The applicant must desirably submit to LEDC information in the sequence outlined below. The applicant may provide

other information which it believes relevant. LEDC may request further information beyond what is specified below.

1. Summary Section for Initial Submission and Equity Capital Matching:

- a. name of BIDCO, address (mailing and physical);
- b. specify the amount of LEDC investment/commitment requested;
- c. specify the minimum and maximum amounts of non-LEDC capital to be raised if the LEDC makes the requested investment/commitment;
- d. specify applicant's projected timetable, with milestones for completion of the fund raising;
- e. specify whether applicant anticipates taking in all of the committed capital investment at closing, or whether applicant plans a phase-in. If a phase-in is planned, specify the proposed schedule. It is permissible to have different scenarios based on the actual amount of capital raised;
- f. market: identify the proposed market of the applicant;
 - i. describe and discuss the types of businesses that the BIDCO will finance; discuss the extent to which the BIDCO intends to specialize in certain industries, or if special circumstances will be addressed;
 - ii. describe the size range of businesses that it is contemplated the BIDCO will finance, with a general indication of where most of the focus is expected;
 - iii. discuss the life cycle stage or stages of the companies which the BIDCO will likely finance, with an indication of where most of the focus is contemplated, i.e., start-up, expansion;
 - iv. discuss the geographic area in which the BIDCO plans to focus; specify the city or parish in which the BIDCO's principal office will be located, and discuss intentions, if any, to establish any additional offices;
- g. management assistance: discuss the plans of the BIDCO to provide management and/or technical assistance to companies for which the BIDCO provides financing; discuss the BIDCO's plans for monitoring its financing, and enforcing provisions of loan or investment agreements; discuss how the BIDCO plans to handle problem loans and investments;
- h. idle funds: describe plans for the management of the idle funds of the BIDCO;
- i. realization of returns by investors: discuss long term plans and strategies for providing a tangible return to the investors in the BIDCO including dividend policy, public markets, future mergers, and acquisitions, etc.;
- j. tax and accounting issues: discuss relevant tax and accounting issues for the BIDCO;
- k. submit business and professional references for all stockholders, members of the board and corporate officers;

l. management structure: describe the proposed management structure for the BIDCO;

m. describe the proposed responsibilities of each of the members of the management team. If any of these people will not be full time, describe their other activities;

n. describe the responsibilities of any management position for which a person has not been identified;

o. specify any other key people including any advisors, consultants, attorneys, and accountants, and submit résumés and/or descriptions of firms. LEDC reserves the right to perform general and criminal background checks on these key people;

p. identify all "principal shareholders" (i.e., owning directly or indirectly, or controlling directly or indirectly, 10 percent or more of the voting stock of the BIDCO), by name with specific ownership identified.

2. Detailed Business Plan Section for Initial Submission, Equity Capital Matching or Co-Investment:

a. provide a market analysis that the applicant deems relevant;

b. marketing strategy. Describe the BIDCO's plans and approach to marketing its services, including methods of identifying potential applicants for financing assistance;

c. screening process and evaluation criteria. Discuss the anticipated number of business firms that will be reviewed for possible financing assistance, in comparison with the number that will actually be financed. Discuss the approach to screening business firms, and the evaluation criteria for deciding whether, and under what terms and conditions, to provide financing assistance;

d. financing. Describe and discuss the financing instruments that are intended to be used by the BIDCO (i.e., debt with capital features, royalty, capital, pure debt [with SBA or not], etc.) Discuss the anticipated mix of the various types of financing instruments. Discuss the anticipated size range of loans/investments to be made, and information regarding pricing, term, and other conditions. Discuss risk/return expectations on projects. Discuss methods of exit from investments;

e. specify applicant's start-up budget, including funds already expended, and a detailed projected budget for completion of the fund raising. Specify the person or persons who will be working on the start-up phase, including how much of their time they will spend, how, if at all, they will be compensated, and their résumés and references. List applicant's seed investors, if any, with amount invested and number of shares of stock owned. Specify any additional amount of seed capital applicant is seeking, including a discussion of possible sources;

f. describe and discuss the applicant's fund raising strategy for raising the private capital;

g. specify the principal investor sources that the applicant will be targeting;

h. attach all specific financing commitments already obtained, including documentation for each. This should include the evidence of the initial required capital;

i. describe specific demonstrations of interest from private investor sources, including documentation where possible;

j. capital structure **C**leverage. Discuss the BIDCO's plans and prospects for leveraging its capital by borrowing money, use of the SBA guarantee secondary market, or other approaches; with respect to borrowing money. Describe the degree of leverage the BIDCO will seek and over what time period. Identify sources of debt financing the applicant plans to utilize. Describe how the applicant plans to structure the debt. If use of the SBA program is contemplated, discuss applicant's approach to this activity and analyze its potential profitability. If applicant is relying heavily on the SBA guarantee program, describe its alternate course of action if the SBA guarantee program is eliminated or its effectiveness significantly curtailed;

k. financial projections: provide the following financial projections:

i. returns-on-average assets and returns-on-capital performance projections, year by year, for a 10-year period. These projections should show summary cash flow, summary income and expense (including taxes), and summary balance sheet data. For these performance projections, operating income and expenses can be grouped by category. Specify the assumptions used for the performance projections;

ii. specify computer programs used for projections, if any, and specify formulas used;

l. fee income. Discuss the potential for fee income, and any plans that the BIDCO might have for generating fee income;

m. complementary and affiliate relationships. Discuss the nature of complementary or affiliate relationships that are anticipated with banks, commercial lenders, investment bankers, venture capitalist, and other institutions. This discussion can be based on general types of institutions and should identify specific institutions where complementary or affiliate relationships have already been discussed or arranged;

3. Co-Investment Submission Requirements. Once certified, to apply for LEDC to co-invest in a project, the BIDCO should submit on behalf of the project the following information:

a. the proposed amount, terms, and conditions of the investment;

b. a business and funding plan for the recipient completed in accordance with the standards outlined in LEDC program material for all other LEDC programs;

c. identify all "principal shareholders" (i.e., owning directly or indirectly, or controlling directly or indirectly, 10

percent or more of the voting stock of the BIDCO,) by name with specific ownership identified;

d. the recipient must have its primary operating activities located in Louisiana, and the application of the funding must result in meaningful economic impact to the area of Louisiana where its activities are conducted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 18:1357 (December 1992), amended LR 23:555 (May 1997).

§7115. Operating Requirements

A. During the period when LEDC owns an investment in a BIDCO, the BIDCO shall operate in accordance with the following parameters:

1. the BIDCO shall provide financing assistance to qualified Louisiana businesses or to firms who will become qualified Louisiana businesses as a result of the funding by the BIDCO. If the business firm has multi-state operations, the criterion that shall be used by the BIDCO is whether or not Louisiana is the state where the primary economic benefit of the financing transaction is likely to occur. The BIDCO shall refrain from purchasing corporate stocks or other capital positions unless such investments are part of the BIDCO's funding plan for the qualified Louisiana business entity;

2. the BIDCO shall maintain as its primary focus the markets which it identifies in its initial business plan;

3. the BIDCO shall invest in or lend to qualified Louisiana businesses an amount at least equal to the sum of LEDC's funds plus the matching private-capital funds. For examples:

a. if LEDC invests \$2.5 million to match \$5 million of private capital funds, the BIDCO shall invest in or lend to qualified Louisiana businesses a minimum of \$7.5 million of its total portfolio, exclusive of operating expenses and minimum capital reserve requirements as set out by the Office of Financial Institutions;

b. if LEDC invests \$1 million to \$2 million of private capital, the BIDCO shall invest/lend to qualified Louisiana businesses a minimum of \$3 million of its total portfolio, exclusive of operating expenses and minimum capital reserve requirements as set out by the Office of Financial Institutions (OFI);

4. without the consent of LEDC, the BIDCO shall not apply to OFI to surrender its license, provided, however, that if LEDC is not a stockholder, no consent of LEDC is necessary. If LEDC grants its consent for such license-surrender application, the application shall state the commitment of the BIDCO to repurchase LEDC's stock at the time of license-surrender for its then-current book value or market value, whichever is greater, or, if discounted pursuant to these rules, for the agreed-upon discounted price. If OFI requires surrender of license, the BIDCO must

immediately notify LEDC to review the future plans of operation;

5. LEDC may negotiate additional operating requirements or material changes in the business plan with individual applicant BIDCOs on a case-by-case basis, as needed to safeguard the quality of LEDC's investment or to promote achievement of the objectives of the program or LEDC;

6. Reporting requirements shall include the following:

a. annual audited financial statements in accordance with GAAP, quarterly financial statements, and minutes of all regular and special board meetings;

b. timely advice of all management and board member changes with reasons for the changes and submission of new members' résumés showing experience and qualifications;

c. reports of activity including client businesses' names, addresses, employment levels before and after funding, and other information required for LEDC's annual legislative report;

d. the BIDCO shall provide LEDC with complete copies of OFI's annual audit report;

e. if the BIDCO is also a CAPCO, it must be in compliance with all CAPCO regulations;

f. the BIDCO's officers shall provide LEDC annual certification that BIDCO investments are consistent with their business plan, and that they are in compliance with the Code of Governmental Ethics, R.S. 42:1112, et seq.;

7. the failure of a BIDCO to comply with these operating requirements will constitute violation of the premise(s) on which LEDC relied in making its investment and will be just cause for LEDC to demand and require that its investment be immediately repurchased in whole or in part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51: 2312(A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 18:1361 (December 1992).

Title 19

CORPORATIONS AND BUSINESS

Part VII. Economic Development Corporation

Subpart 7. Louisiana Small Business Linked Deposit Loan Program

Chapter 73. Procedures for Authorization and Administration

' 7301. Definitions

*'But For' Statement*Ca signed statement from the lending institution that 'but for' the additional cash flow from the linked deposit the lender would not have made this loan.

*Certified Disadvantaged Business*Any business which has received certification from the Division of Economically Disadvantage Business Enterprises.

*Corporation*Cthe Louisiana Economic Development Corporation of the Department of Economic Development.

*Eligible Lending Institution*Any bank located in this state and organized under the laws of this state and any national bank which is authorized to make commercial loans and which agrees to participate in the linked deposit program as defined herein.

*Eligible Small Business*Any business, that has all of the following characteristics:

1. is headquartered in this state;
2. maintains offices and operating facilities in this state and transacts business in this state;
3. employs fewer than 150 employees, the majority of whom are residents of this state;
4. is organized for profit;
5. is not a federally chartered or state chartered bank or savings and loan institution;
6. is not engaged in real estate purchasing, holding, renting, or leasing;
7. is not a professional business of doctors, dentists, chiropractors, certified public accountants, or attorneys.

*High Unemployment Area*Ca defined by the third quartile of unemployment in the state by the latest semi-annual statistics from the Louisiana Department of Labor.

*Linked Deposit*Ca certificate of deposit placed by the treasurer (as defined herein) with an eligible lending institution at a percentage below existing investment rates, as determined and calculated by the treasurer, provided the institution agrees to provide a loan to an eligible small business at an equal percentage below the existing borrowing rate applicable to each specific business at the time of the deposit of state funds in the lending institution.

*Low Employment Area*Ca defined to be in the lower two quartiles of the state by the latest semi-annual statistics from the Louisiana Department of Labor.

*Substantial Stockholders*Any person who owns more than 20 percent of a business applying for or currently participating in the *Linked Deposit* loan program as outlined in LAC 19.VII.Subpart 7.Chapter 73.

*Treasurer*Cthe treasurer of the state of Louisiana.

*Very High Unemployment Area*Ca defined to be in the upper quartile of unemployment in the state by the latest semi-annual statistics from the Louisiana Department of Labor.

AUTHORITY NOTE: Promulgated in accordance with LA R.S. 51:2312.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, LR 25:412 (March 1999).

' 7303. General Provisions

A. Priority for application approval and funding shall be given as follows.

1. An eligible Louisiana business located in a very high unemployment area which creates one or more jobs shall receive a maximum of a 4 percent interest rate buy-down.
2. An eligible Louisiana business located in a high unemployment area which creates three or more jobs shall receive a 3 percent interest rate buy-down.
3. An eligible Louisiana business, in a low unemployment area that creates four or more jobs shall receive a maximum of a 3 percent interest rate buy-down.
4. An eligible Louisiana business in a low unemployment area creating a minimum of one to three jobs shall receive a maximum of a 1 percent interest rate buy-down.

B. At no time shall the total amount of the dollars in the linked deposits in low unemployment areas exceed 33 percent of the total available for linked deposits, unless otherwise specified by the treasurer.

C. Applications which provide a *'but for' statement* shall be eligible for a 5-year term on the linked deposit. All others applications are eligible for 2-year terms only.

AUTHORITY NOTE: Promulgated in accordance with LA R.S. 51:2312.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, LR 25:412 (March 1999).

**' 7305. Linked Deposit Loan Program Authorization
Lending Institution Requirements; Applicants
Requirements and Conditions for Approval**

A. The treasurer may invest in linked deposits, as provided and defined by R.S. 51:2312 and also defined herein, provided that at the time of placement of any linked deposit, the total amount of such investments at any one time shall not exceed, in the aggregate, \$30,000,000. When deciding whether to invest in linked deposits, the treasurer shall give priority to the investment, liquidity, and cash flow needs of the state and a determination of the financial soundness of the eligible lending institution.

B. An eligible lending institution that desires to receive a linked deposit shall accept and review applications for loans from eligible small business. The eligible lending institution shall apply all usual lending standards to determine the creditworthiness of each eligible small business with the exception of a business the lending institution determines is eligible as a 'but for' application. The eligible lending institution shall not charge, levy or collect any loan application fee, processing fee, or other charges other than its normal loan application fee, processing fee, or other charges when handling a linked deposit application.

C.1. Only one loan through the linked deposit program shall be made and shall be outstanding at any one time to any eligible small business, owner, or borrower.

2. The maximum amount of a linked deposit which may be made to any eligible small business at any one time shall be \$200,000.

3. No loan shall be made to any officer or director of the lending institution making the loan.

4. No loan shall be made for the sole purpose of refinancing previous debt held either by the lending institution or another lending institution. The maximum debt refinance allowed is 25 percent of the total loan amount for any eligible small business.

5. There shall be at least a one year moratorium from the time one linked deposit matures to time of application for any new linked deposit for any eligible small business.

6. The net jobs created by the linked deposit must be maintained by the business for a period of not less than the period of the linked deposit or the treasurer may, in his sole discretion, declare the deposit and interest earned thereon, or any part thereof, to become immediately due and payable, not withstanding any agreement or contract to the contrary.

D. An eligible small business shall certify on its loan application that the reduced rate loan will be used exclusively to create new jobs or preserve existing jobs and employment opportunities in the state. Job titles of all existing employees as well as job titles of new jobs to be created shall be forwarded with each application and reapplication. Whoever, knowingly files a false statement

concerning such application shall be guilty of the offense of filing false public records and shall be subject to the penalty provided for in R.S. 14:133.

E. In considering which eligible small business to include in the linked deposit loan package for reduced-rate loans, the eligible lending institution shall give priority to the economic needs of the area of the state in which the business is located, the number of jobs to be created in the state by the receipt of such loans, and such other factors as the eligible lending institution considers appropriate to determine the relative financial need of the eligible small business.

F. The eligible lending institution applying for a 5-year linked deposit shall forward to the corporation a complete loan package as prepared for and presented to the institutions loan committee which includes a statement 'but for' the additional cash flow from this linked deposit, this loan will not be made under these terms and conditions.

G. 1.The eligible lending institution shall forward to the corporation and the treasurer for review, a linked deposit loan package in the form and manner prescribed by the corporation. The package shall include such information as required by the corporation including:

- a. the amount of the loan requested;
- b. the number of jobs to be created in the state by each eligible small business;
- c. the ratio of state funds requested to jobs created; and
- d. any reports, statements, or plans applicable to the business, the overall financial need of the business, and such other factors as the corporation considers appropriate.

2. The eligible financial institution shall certify that each applicant is an eligible small business as defined herein and shall, for each eligible small business, certify the present borrowing rate applicable to each specific eligible small business. Within 45 days after receipt, the corporation shall provide written recommendations to the treasurer on each linked deposit loan package received from eligible financial institutions.

H. 1.The treasurer may accept or reject a linked deposit loan package or any portion thereof, based on:

- a. the treasurer's review of the recommendations of the corporation;
- b. the availability and amount of state funds to be deposited; and
- c. a determination of the financial soundness of the financial institution in which the deposit is to be made.

2. The treasurer shall notify the corporation and the eligible lending institution of acceptance or rejection of a linked deposit loan package within 15 days of receipt by the treasurer of the recommendations of the corporation.

I. Upon acceptance of the linked deposit loan package or any portion thereof, the treasurer may place certificates of

deposit with the eligible lending institution at a percentage below the current investment rates, as determined and calculated by the treasurer.

J. The eligible lending institution shall enter into a deposit agreement with the treasurer, which shall include the requirements necessary to carry out the purposes of LAC 19:VII.Chapter 73. The requirements shall reflect the market conditions prevailing in the eligible lending institution's lending area. The agreement shall specify the period of time in which the lending institution is to lend funds upon the placement of a linked deposit, and shall include provisions for the certificates of deposit to mature within a period not to exceed one year. The treasurer may renew a certificate of deposit in one-year increments, but in no event shall the total period of time that a certificate of deposit is placed with any lending institution exceed five consecutive years. Interest shall be paid at the times determined by the treasurer. However, upon placement of a linked deposit, the treasurer will give priority to renewal of existing linked deposits prior to placement of new linked deposits. Prior to renewal of linked deposits, the treasurer shall continue to give priority to the investment, liquidity cash flow needs of the state and a determination of the financial soundness of the eligible lending institution.

K. The period of time for which each certificate of deposit is placed with an eligible lending institution shall be neither longer nor shorter than the period of time for which the linked deposit shall be used to provide loans at reduced interest rates. The agreement shall further provide that the state shall receive investment interest rates on any certificate of deposit or any portion thereof for any period of time for which there shall be no corresponding linked deposit loan outstanding to an eligible small business.

L. Upon placement of a linked deposit with an eligible lending institution, the institution shall lend such funds to the approved eligible small business listed in the linked deposit loan package. Each loan shall be at a fixed or variable rate of interest for a period of one year which shall

be a percentage below the current borrowing rate applicable to each eligible small business. All records and documents pertaining to the linked deposit program shall be segregated by each lending institution for ease of identification and examination. A certification of compliance with §7305 in the form and manner prescribed by the treasurer shall be completed by the lending institution and filed with the treasurer and the corporation.

M. If it is discovered that there is a linked deposit made for any purpose not authorized, the certificate may be matured and/or rewritten, if appropriate, without penalty to the State Treasurer. If this situation occurs, the eligible lending institution will pay the State Treasury the same terms and interest rate as if the deposit were placed without benefit of a linked deposit. If the eligible lending institution fails to pledge securities to the treasurer or if such securities shall be unsatisfactory to secure the deposit, in his sole discretion, the treasurer may declare the deposit and interest earned thereon, or any part thereof, to become immediately due and payable, notwithstanding any agreement or contract to the contrary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, LR 25:414 (March 1999).

'7307. Liability

A. Neither the state, the corporation, nor the treasurer shall be liable to any lending institution in any manner for payment of the principal or interest on any loan to an eligible small business under §730. Any delay in payments or default on the part of a small business shall not in any manner affect the deposit agreement between the eligible lending institution and the treasurer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, LR 25:414 (March 1999).

Title 19
CORPORATIONS AND BUSINESS
Part VII. Economic Development Corporation
Subpart 9. Micro Loan Program

Chapter 75. Loan Policies

§7501. Purpose

A. The Louisiana Economic Development Corporation (LEDC) wishes to stimulate the flow of private capital, long-term loans, and other financial assistance for the sound financing of the development, expansion, and retention of small business concerns in Louisiana as a means of providing high levels of employment, income growth, and expanded economic opportunities, especially to disadvantaged persons and within distressed and rural areas.

B. The corporation will consider sound loans so long as resources permit. The board of the corporation recognizes that guaranteeing, participating, or lending money carries certain risks and is willing to undertake reasonable exposure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:555 (May 1997).

§7503. Definitions

Disabled Person's Business Enterprise A small business concern which is at least 51 percent owned and controlled by a disabled person as defined by the federal Americans With Disabilities Act of 1990.

Economically Disadvantaged Business A Louisiana business certified as economically disadvantaged by the Department of Economic Development's Division of Economically Disadvantaged Business Development.

Micro Loans Those loans ranging in size from \$5,000 to \$50,000.

Small Business Concerns As defined by SBA for purposes of size eligibility as set forth by 13 CFR 121.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:555 (May 1997).

§7505. Application Process

A. Applicant is required to first contact a financial lending institution that is willing to entertain such a loan with the prospect of additional credit support provided by a LEDC guarantee or a participation and complete the application process. An applicant may also apply to LEDC directly for loan consideration, provided it is based upon documented eligibility as established as follows. Only after

rejection by at least two lending institutions for participation on the basis of either a loan participation or a loan guarantee shall an applicant be eligible to be considered for a direct loan by LEDC. Such applications may be forwarded directly to LEDC.

B. Information submitted to LEDC with the application representing the applicant's business plan, financial position, financial projections, personal financial statements and background checks will be kept confidential to the extent allowed under the Public Records Law, R.S. 44:1, et seq. Confidential information in the files of LEDC and its accounts acquired in the course of duty will be used solely by and for LEDC.

C. Submission and Review Policy

1. A completed Louisiana Economic Development Corporation application form along with information identified by LEDC as appropriate must be submitted to LEDC. Applications will be processed, with decisions confirmed promptly.

2. Economically disadvantaged businesses applying for assistance under that provision will have to submit certification from the Division of Economically Disadvantaged Business Development Office of the Department of Economic Development along with the request for financial assistance.

3. Businesses applying for consideration under the disabled persons provision shall submit adequate information to support the disabled status.

4. LEDC staff will review the applications for completeness and submit only complete packages for analysis. Any applications not receiving approval in the initial analysis process shall be individually reviewed and exceptions to underwriting criteria noted. The LEDC staff will report to the screening committee monthly those applications approved, and those not recommended for approval with reasons.

5. Loans guaranteed or participated in by LEDC must qualify under LEDC pre-approved underwriting criteria using standardized LEDC documentation. The originating bank is responsible for all loan closing documentation. Closing will occur only after a site visit by an LEDC staff member or designated representative.

6. Direct loans by LEDC must qualify under LEDC pre-approved underwriting criteria, or be approved by the board of directors as an exception to such criteria. Such

loans will be closed by LEDC or its designated agents using standardized LEDC documentation.

7. Only those applicants and/or their designated representatives asked to be present by the LEDC staff need to be present for the screening committee.

8. The board of directors will review the results of all applications processed and screened. Loans recommended for approval by the LEDC staff as exceptions to standard underwriting criteria will be presented to the screening committee of the board for approval. Loans approved under standard underwriting procedures requiring direct LEDC funding, LEDC guarantees or participation shall be approved by LEDC in accordance with established policies and procedures.

9. The applicant will be notified promptly from date accepted for processing by mail of the outcome of the application.

10. A LEDC commitment letter, standard guaranty or participation agreement will be mailed to the bank promptly after approval by the LEDC staff applying standardized evaluation processes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:556 (May 1997).

§7507. Eligibility

A. Small business concerns as defined by SBA for purposes of size eligibility as set forth by 13 CFR 121.

B. Small businesses whose owner(s) or principal stockholder(s) shall be a resident of Louisiana and the business is domiciled in Louisiana with preference given to certified economically disadvantaged businesses or businesses owned by disabled persons.

C. Funding request for all but the following may be considered:

1. restaurants, except for regional or national franchises;
2. bars;
3. any project established for the principal purpose of dispensing alcoholic beverages;
4. any establishment which has gaming or gambling as its principal business;
5. any establishment which has consumer or commercial financing as its business;
6. funding for the acquisition, renovation, or alteration of a building or property for the principal purpose of real estate speculation;
7. funding for the principal purpose of refinancing existing debt in excess of 10 percent of the total requested loan amount;

8. funding for the purpose of buying out any stockholder or equity holder by another stockholder or equity holder in a business;

9. funding for the purpose of establishing a park, theme park, amusement park, or camping facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:556 (May 1997).

§7509. General Loan Provisions

A. The Louisiana Economic Development Corporation will be guided by the following general principles in making loans:

1. The corporation shall not knowingly approve any loan guarantee, loan participation or loan if the applicant has presently pending or outstanding any claim or liability relating to failure or inability to pay promissory notes or other evidence of indebtedness including state or federal taxes, or bankruptcy proceeding; nor shall the corporation approve any loan or guarantee if the applicant has presently pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit.

2. The terms or conditions imposed and made part of any loan or loan guarantee authorized by vote of the corporation board shall not be amended or altered by any member of the board or employee of the Department of Economic Development except by subsequent vote of approval by the board at the next meeting of the board in open session with full explanation for such action.

3. The corporation shall not subordinate its position.

B. Interest Rates

1. On all loan guarantees the interest rate is to be negotiated between the borrower and the bank but may not exceed four percentage points above New York prime as published in the Wall Street Journal at either a fixed or variable rate.

2. On all participation loans the interest rate to LEDC shall be determined by utilizing the rate for a U.S. Government Treasury Security for the time period that coincides with the term of the participation and adding 1 percent.

3. On all direct loans by LEDC the interest rate to LEDC shall be negotiated at a rate commensurate with the loan risk for either variable or fixed rate loans.

C. Collateral

1. Collateral to loan ratio will be no less than 1:1, except for direct loans where the ratio will be 1.2:1.

2. Collateral position shall be negotiated but will be no less than a sole second position.

3. Collateral Value Determination

a. The appraiser must be certified by recognized organization in area of collateral.

b. The appraisal cannot be over 90 days old.

c. The percentage of value considered shall be consistent with the underwriting criteria established by the LEDC Board from time to time.

4. Acceptable collateral may include, but not be limited to, the following:

a. fixed assets Creal estate, buildings, fixtures;

b. equipment, machinery, inventory;

c. personal guaranties are open for negotiation, if used, there must be signed and dated personal financial statements;

d. accounts receivable with supporting aging schedule, except for direct loans where accounts receivable are ineligible;

5. unacceptable collateral may include but not be limited to the following:

a. stock in applicant company and/or related companies;

b. personal items.

D. Equity

1. Will be no less than 10 percent of the loan amount for a start-up operation, acquisition, or expansion.

2. Equity is defined to be:

a. cash;

b. paid in capital;

c. paid in surplus and retained earnings;

d. partnership capital and retained earnings.

3. No research, development expense or intangibles will be considered equity.

E. Amount

1. For small businesses the corporation's guarantee shall be no greater than 80 percent of a loan.

2. For certified economically disadvantaged businesses or businesses owned by disabled persons, the guarantee shall be no greater than 90 percent of a loan.

3. The corporation's participation in loans shall be no greater than 50 percent, but in no case shall it exceed \$25,000.

F. Terms

1. Terms may be negotiated with the bank but in no case shall the terms exceed five years.

G. Fees

1. LEDC will charge a minimum guarantee fee of 1 percent of the guarantee amount.

H. Use of Funds

1. Purchase of fixed assets, including buildings that will be occupied by the applicant to the extent of at least 51 percent.

2. Purchase of equipment, machinery, or inventory.

3. Line of credit for accounts receivable or inventory.

4. Debt restructure may be considered by LEDC but will not be considered when the debt:

a. exceeds 10 percent of total loan; and/or

b. pays off a creditor or creditors who are inadequately secured; and/or

c. provides funds to pay off debt to principals of the business; and/or

d. provides funds to pay off family members.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:557 (May 1997).

§7511. General Agreement Provisions

A. Guaranty Agreement

1. Originating bank or LEDC agent responsible for proper administration and monitoring of loan and proper liquidation of collateral in case of default.

2. The loan shall not be sold, assigned, participated out, or otherwise transferred without prior written consent of the LEDC Board.

3. If liquidation through foreclosure occurs, the bank sells collateral and handles legal proceedings.

4. There will be a reduction of the guarantee:

a. in proportion to the principal reduction of the amortized portion of the loan;

b. if no principal reduction has occurred in any annual period of the loan, a reduction in the guarantee amount will be made proportional to the remaining guarantee life.

5. The guarantee will cover the unpaid principal amount owed only.

6. Delinquency will be defined according to the bank's normal lending policy and all remedies will be outlined in the guaranty agreement. Notification of delinquency will be made to the corporation, in writing and verbally, in a time satisfactory to the bank and the corporation as stated in the guaranty agreement.

B. Participation Agreement

1. The bank is responsible for administration and monitoring of the loan.

2. The lead bank will hold no less participation in the loan than that equal to LEDC's but not to exceed its legal lending limit.

3. The lead bank may sell other participation with LEDC's consent.

4. Should liquidation through foreclosure occur, the bank will sell the collateral and handle the legal proceedings.

5. The bank is able to set its rate according to risk. A blend with the LEDC rate to yield a lower overall rate to project.

6. Delinquency will be defined according to the bank's normal lending policy and all remedies will be outlined. Notification of delinquency will be made to the corporation in writing and verbally in a time satisfactory to the bank and the corporation.

C. Borrower Agreement. At the discretion of LEDC the borrower will agree to strengthen management skills by participation in a form of continuing education acceptable to LEDC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:557 (May 1997).

§7513. Confidentiality

A. Confidential information in the files of the corporation and its accounts acquired in the course of duty

is to be used solely for the corporation. The corporation is not obliged to give credit rating or confidential information regarding applicant. Also see Attorney General Opinion Number 82-860.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:558 (May 1997).

§7515. Conflict of Interest

A. No member of the corporation, employee thereof, or employee of the Department of Economic Development, members of their immediate families shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with the corporation for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such corporation. If any contract or agreement shall be made in violation of the provisions of this Section the same shall be null and void and no action shall be maintained thereon against the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:558 (May 1997).

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